

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

FREMONT UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009080778

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On August 18, 2009, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Fremont Unified School District (District). On September 2, 2009, District filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (§ 1415(b)(7)(A)(ii)(III) & (IV);<sup>2</sup> Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

The party against whom the complaint has been filed is entitled to know the nature of the specific allegations being made against it, such that the party may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

## DISCUSSION

Student's complaint alleges five claims, as follows<sup>3</sup>:

1. **Denial of a free appropriate public education (FAPE) due to a failure to assess.**

Regarding this issue for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District because the complaint does not identify what particular behaviors occurred in the past two years, and how these are escalating behaviors. Additionally, Student's complaint fails to allege why those behaviors should have prompted assessments for a specific learning disability, Pervasive Development Disorder, Autism, a referral for an AB3632 mental health assessment or a Functional Analysis Assessment. Student provides a list of several disciplinary actions taken against him since January 2007. Student does not provide sufficient facts to allege a causal nexus between these incidents and the trigger for the District to conduct assessments in the areas identified in the complaint.

Furthermore, Student asserts that he has been qualified for special education under the category of specific learning disability since second grade and as recently as in an individualized educational program (IEP) dated January 13, 2009. The complaint fails to provide sufficient facts as to how the District failed to assess for specific learning disability when Student is already eligible under this category.

2. **Failure to address behavior problems.**

Regarding this issue for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District because the complaint does not identify what particular behaviors were disruptive to his learning and to that of other students. Student does not identify whether he was assessed for behavioral issues and the District failed to develop a behavior plan and goals and objectives, or whether the District failed to assess for behavioral issues altogether. Student alleges that the District failed to implement behavior goals and objectives after the January 13, 2009 IEP was developed. However, Student neither identifies whether the IEP actually contained behavior goals and objectives, or how their non-implementation affected Student's behaviors.

Student's complaint fails to provide sufficient facts as to what Student claims as behavioral needs that were unaddressed by the District.

3. **Denial of FAPE due to unmet IEP goals.**

Regarding this issue for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District because neither this claim nor any

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<sup>3</sup> Student also requests a change of venue. This request will be addressed in a separate order if the District opposed the venue change.

other part of the complaint provides any information regarding goals and objectives. Student's heading for this claim states that he was denied a FAPE because the District failed to address his inability to achieve his IEP goals and objectives. However, the body of the claim fails to provide any information on goals and objectives or Student's failure to achieve them.

**4. Denial of FAPE through denial of parental participation.**

Regarding this issue for hearing, Student's complaint does not contain sufficient factual allegations to provide the required notice to the District. Student's complaint is not clear whether Student asked for assessments in particular areas and the District failed to issue prior written notice of its refusal to conduct assessment, or the District had sufficient independent knowledge and failed to assess Student. It cannot be ascertained what program Student asked for that the District refused and therefore should have issued a prior written notice regarding its refusal. For each of these allegations, the complaint fails to state when these incidents occurred.

Student further alleges that the District failed to provide him with a Resource period and its failure to provide written notice to the parent resulted in a denial of FAPE. The complaint fails to provide sufficient factual allegations stating what time period this claim covers, which IEP(s) provide the basis for the Resource period, or the frequency and duration of the Resource period Student alleges he was denied.

Finally, Student alleges that the District failed to design a unique program and interrogated Student for over six hours without an attorney. Student fails to provide sufficient factual allegations to provide the required notice to the District of when the failure to design a unique program existed and how the District failed to provide prior written notice. Student fails to provide sufficient factual allegations to provide the required notice to the District of who conducted the interrogation and the basis for a district to be required to provide Student's parent prior written notice in relation to Student's special education services.

**5. Compensatory education claim.**

Regarding this issue for hearing, Student's complaint does not contain sufficient factual allegations of a denial of FAPE to provide the District with the required notice. The claim does not contain any factual allegations regarding a specific denial of FAPE, but instead asserts that due to the alleged denials of FAPE in the rest of the complaint Student is entitled to compensatory education. The claim is in actuality a proposed resolution.

As discussed above, a respondent is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the respondent may be able to prepare a response, prepare for a resolution meeting, or prepare a defense for hearing. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

### **Challenge as to Student's Proposed Resolutions.**

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (§1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are not well-defined. They seek a variety of assessments, counseling services, private school placement, public school placement, various therapies and compensatory education, amongst other resolutions. The District states that the resolutions are not connected to the claims alleged and are vague. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

It is noted that as part of the proposed resolutions, Student seeks educational records from Mount Diablo Unified School District. This school district is not named in the complaint and OAH has no jurisdiction to order a resolution from an unnamed party.

### **ORDER**

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and District's notice of insufficiency is granted.
2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.<sup>4</sup>
3. The amended complaint shall comply with the requirements of section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Dated: September 8, 2009

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/s/  
BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>4</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.