

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CENTRAL UNIFIED SCHOOL DISTRICT
& FRESNO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010080336

ORDER GRANTING MOTION TO
AMEND AND DETERMINATION OF
SUFFICIENCY OF AMENDED DUE
PROCESS COMPLAINT

On August 18, 2010, Student filed an amended Due Process Hearing Request¹ (amended complaint) naming Central Unified School District (CUSD) and Fresno Unified School District (FUSD) as respondents. The original complaint was filed August 9, 2010. Student did not file a motion to amend, but the amended complaint contains new allegations relating to an offer of placement and services made by CUSD at an IEP on August 10, 2010. On August 27, 2010 FUSD timely filed a Notice of Insufficiency (NOI). As discussed below, the filing of the amended complaint will be treated as a motion to amend and will be granted. As to the NOI, the complaint is sufficient as to FUSD as to Issues One, Two, and Three; however, Issues Four and Five are insufficient and Student will be granted leave to amend. Student is instructed that Issue Five must be filed as a separate motion.

Amended Complaint

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (§1415(c)(2)(E)(i)(II).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (§1415(f)(1)(B).)

Here, Student failed to request permission to amend, such that the filing of the amended complaint will be treated as a motion to amend. Although FUSD and CUSD did not give permission to amend, it is more than five days prior to the due process hearing. The amendment came just nine days after the original filing and alleges new facts and a new legal theory against CUSD regarding the denial of FAPE based on the implementation of

¹ 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). All subsequent references are to Title 20, United States Code, unless otherwise indicated.

placement and services developed at an August 10, 2010 IEP held by CUSD. Accordingly, good cause exists to amend the complaint and all dates will be reset consistent with section 1415(f)(1)(B).

NOI

Here, FUSD's main contention in its NOI is that the time periods are inadequately described and there are inadequate factual allegations to differentiate between the allegations being made against FUSD and CUSD. As discussed below, the complaint is sufficient as to FUSD as to Issue One, Two and Three only. Issue Four is insufficient because it is ambiguous as to which District allegedly violated IDEA and when. Issue Five is insufficient because it does not alleged a denial of FAPE, but appears to be a motion for stay put, which should be separately filed.

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A). 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.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶

² § 1415(b) & (c).

³ § 1415(b)(7)(A)(ii)(III) & (IV)

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.]; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁷

Here, the complaint lays out a factual history in which Student alleges that within the last two years (and even before), he resided in CUSD, but attended FUSD as an interdistrict transfer student. As of August 10, 2010, CUSD held an IEP meeting for Student and offered him a placement and services, which was implemented prior to the time Student filed the amended complaint. The factual allegations make it clear that all allegations, other than those alleged in Issue Four or relating to the program implemented under CUSD's August 10, 2010 IEP, apply to FUSD.

In Issue One, Student alleges that during the two years prior to filing, FUSD failed to adequately assess him in all areas of suspected disability. The complaint contains some allegations and facts alleging that Student should have been assessed in: other areas of learning disability, behavior, language and social skills. Issue One is sufficient.

In Issue Two, Student alleges that during the two years prior to filing, FUSD failed to provide an appropriate program and services. The general factual allegations contain a general recitation of the program offered by FUSD, as well as psychologist recommendations for what Student's program should look like. These allegations are sufficient to put FUSD on notice of the alleged denials of a FAPE. Issue Two is sufficient.

In Issue Three, Student alleges a variation on Issue One, that during the two years prior to filing, FUSD did not adequately assess Student's need for behavior intervention and that as a result, Student should have had a BSP and counseling. Issue Three is sufficient.

In Issue Four, Student alleges that "the District" denied him a FAPE by not producing records. There is no allegation anywhere in the complaint from which it can be determined which district, CUSD or FUSD, Student is referring to. In addition, Student fails to state how records were requested, and also fails to allege a specific date the records request was made. Because it cannot be determined which District Issue Four refers to, and there are no exact dates or procedures alleged, Issue Four is insufficient.

Issue Five does not allege a denial of FAPE. Instead, Issue Five appears to be a motion for stay put because it seeks a placement while the amended complaint is pending. Because Issue Five does not allege an issue for due process hearing, it is

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

insufficient. Issue Five is also insufficient as a “motion for stay put” because it contains no evidence in support of such a motion. Thus, to the extent Issue Five is seeking to make a motion for stay put, Student is instructed that the “motion” will only be considered if separately filed as such with supporting admissible evidence included as an exhibit.

ORDER

1. Student’s Motion to Amend is granted. All due process hearing timelines will be reset based on the August 18, 2010 filing date of the amended complaint. The original complaint, including any request for stay put, is now moot following the filing of the amended complaint. OAH will issue a new scheduling order.

2. As to the FUSD NOI, Issues One, Two and Three of the amended complaint are sufficient as to FUSD under section 1415(b)(7)(A)(ii).

3. Issue Four of the amended complaint is insufficiently pled under section 1415(c)(2)(D).

4. Issue Five of the amended complaint does not state a “problem” regarding the provision of a FAPE, but instead appears to be attempting to bring a motion for stay put. To the extent Student is attempting to bring a motion for stay put, it should be filed separately, be clearly marked as a “Motion for Stay Put” and shall contain admissible evidence of what Student contends is the stay put placement while the amended due process complaint is pending.

5. Student shall be permitted to file a second amended complaint under section 1415(c)(2)(E)(i)(II) should Student desire to remedy the insufficiency in Issue Four.⁸ 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. If Student fails to file a second amended complaint within the time allotted, the hearing shall proceed only on Issues One, Two, and Three of the amended complaint.

Dated: August 30, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.