

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010100312

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND ORDER
BIFURCATING EXPEDITED ISSUE
AND SETTING SEPARATE HEARING

On October 6, 2010, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Mediation and Due Process Hearing¹ (complaint) naming the San Francisco Unified School District (District).

On October 18, 2010, District filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

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 Title 20 United States Code 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

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).

² 20 U.S.C. § 1415(b) & (c); Ed. Code § 56502, subd. (d).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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 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 complaint provides enough information when, on its face, 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 Individuals with Disabilities Education Act of 2004 and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint describes five problems (issues), some of which are sufficient to proceed to hearing and some which are insufficient, as discussed below.

Issue 1 is not sufficiently described to put District on notice as to the basis of Student’s claim. Student claims that District’s individualized education program (IEP) placement in the September 27, 2010 IEP “changed” his placement and that Parent does not agree with the unknown change. There is insufficient information because Student does not describe what his prior placement was, what the District offered, and why the offered placement did not meet his unique needs related to his disability.⁸

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.].

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).

⁸ The presumed fact that District is aware of what it offered in connection with the September 2010 IEP does not relieve Student from identifying in his complaint those parts or components of the offer with which he disagrees.

Issue 2 describes unknown “safety concerns – incidents involving bullying and lack of aides and classroom staff to handle situation.” This issue is not sufficiently described to put District on notice as to the basis of Student’s claim. For example, there is no brief description of the incidents involved, including the approximate date(s), if known, and whether District personnel were present or made aware of the incidents. Whether Student claims that he was bullied by other pupils, or that his IEP required him to be attended by an aide who wasn’t present when bullying occurred is unclear. The complaint does not provide sufficient facts to inform the District what this problem is and is insufficient on its face.

In Issue 3, Student asserts that an IEP invitation dated September 16, 2010, “listed” unknown school participants, and that District then failed to have an “administrator or District employee” attend an IEP meeting on an unknown date. This issue is unclear and does not provide the District with sufficient information to understand the problem. It is unclear whether Student claims the IEP meeting notice was defective in some way. In addition, Student does not explain whether the District personnel who participated in the meeting did not meet the legal requirements for Student’s IEP team. For example, the law requires a general education teacher to attend the meeting only if the pupil “is, or may be, participating in the regular education environment.” Not less than one special education teacher or provider of the pupil should attend the meeting. The law does not require a school “administrator” to attend, but does require attendance of a “representative” of the District “who is qualified to provide, or supervise the provision of...” special education services. (Ed. Code § 56341, subds. (b)(2), (b)(3), and (b)(4).) Since the law may find the absence of a required school teacher to be a per se violation of a free appropriate public education (FAPE), Student’s failure to expressly claim that the absence of certain persons caused him to be denied a FAPE in some way is not critical. (*M.L. v. Federal Way School Dist.* (9th Cir. 2003) 394 F.3d 634.) Overall, however, the claim is insufficient.

Issue 4 describes that District conducted a triennial psycho-educational assessment of Student dated September 1 through 15, 2010, and that Parent does not agree with the assessment, including the procedures used in testing. This problem is sufficiently stated to proceed to hearing. The law does not require Student to go into detail about why he disagrees with specific assessment tools, nor does it require him to notify District of his disagreement prior to filing his complaint. (Ed. Code § 56329, subd. (b).) District is now apprised that Student disagrees with its assessment. Student did not delay in providing notification as his complaint was filed less than a month after the assessment, on October 6, 2010.

In Issue 5, Student requests an expedited hearing claiming that his unspecified behavior in violating a student code of conduct was a manifestation of his unstated disability. Issue 5 is determined to be a request for an expedited hearing. Section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision, similar to that in section 1415(c)(2)(A), for testing the sufficiency of a request for an expedited hearing

pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearing cases. Thus, an NOI cannot be granted regarding a due process complaint in an expedited hearing, and the District's NOI regarding Issue 5 is denied. Moreover, notwithstanding OAH's scheduling order, the law requires Issue 5 to be bifurcated in order to schedule it for an immediate hearing within the expedited timeframe.

District's arguments that Student's proposed resolutions are inadequate are not persuasive. The proposed resolutions stated in Student's complaint may not be well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time, Parent was candid about saying she was not sure about some remedies, and OAH has jurisdiction to consider appropriate remedies under the law or in equity.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. If Student's parent requests the assistance of a mediator in identifying the issues, Parent should contact OAH immediately in writing.

ORDER

1. Issue 4 of Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 5 is bifurcated and set for a separate expedited hearing as follows:

Mediation:	October 26, 2010, at 9:30 a.m.
Prehearing Conference:	October 27, 2010, at 1:30 p.m. ⁹
Due Process Hearing:	November 2, 2010, at 9:30 a.m.

3. Issues 1, 2, and 3 of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

4. Student shall be permitted to file an amended complaint as to all issues other than Issue 5, under Title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰

⁹ In connection with Issue 5, each party shall file an expedited prehearing conference statement, as described in the OAH scheduling order dated October 11, 2010, not later than 10:00 a.m. on October 27, 2010.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

6. If Student fails to timely file an amended complaint, the non-expedited hearing shall proceed as currently scheduled on December 2, 2010, only as to Issue 4, in Student's complaint.

Dated: October 20, 2010

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings