

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012040652

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On April 12, 2012, Parent, on behalf of Student, filed a Request for Due Process Hearing¹ (complaint) naming Fairfield-Suisun Unified School District (District). On April 27, 2012, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint which enumerated six issues.² OAH issued an order of determination of sufficiency on April 30, 2012 finding Issues Three and Four sufficient and One, Five, and Six insufficient. Student was further ordered to file an amended complaint not later than 14 days from the date of this order. Parent was advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parent was encouraged to contact OAH to obtain the assistance of an OAH assigned mediator in amending the due process hearing request.

On or about May 14, 2012 Student timely filed with OAH a "Notice of Sufficiency" which was accepted by OAH as Student's First Amended Complaint (amended complaint).³ On May 29, 2012 District filed a NOI contending the amended complaint was still insufficient as to Issues One, Five, and Six and failed to identify Issues Two, Three and Four.

APPLICABLE LAW

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 The order noted that parent had not identified a second issue and it was not addressed in the order.

³ See PHC Order issued by ALJ Charles Marsdon on May 16, 2012 accepting Student's filing as the First Amended Complaint and re starting the due process timelines.

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ 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.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ 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.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁹

DISCUSSION

⁴ 20 U.S.C. § 1415(b) & (c).

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

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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).

Student's amended complaint attempts to explain Issues One, Five, and Six that were found to be insufficient in the April 30, 2011 Determination of Sufficiency. The amended complaint does not address whether Student was still asserting Issues Three and Four, which had been found sufficient. Student's failure to address Issues Three and Four is considered to be an oversight by Student as will be addressed in the order below. However, Student still has failed to state sufficient claims as to Issues One, Five, and Six discussed below.

Issue One of the amended complaint refers to a history of harassment and parent's attempts to obtain resolution over issues brought to District by parent. Issue One still alleges that Student previously entered into a settlement agreement, at mediation in OAH case no. 2012010272, which was withdrawn as a consequence. Student asserts that he entered into the agreement because of an alleged misrepresentation on the part of a District representative. The amended complaint still seeks an order allowing Student to rescind the settlement. Issue One does not assert facts as to how the rescission of the prior settlement agreement is a problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education (FAPE) to Student. Issue One is insufficient.

Issue Five of the amended complaint alleges that District personnel assessed Student without Parent's permission and appears to raise a claim that District attempted at a mediation to deny Student services to meet his deaf and hard of hearing needs with no mention of District's action or failure to act in connection with an individualized educational program (IEP) or an IEP meeting. In addition, the proposed resolution is uncertain and appears to seek relief outside of the IDEA. Issue Five still does not enunciate an issue, but instead asserts facts without stating how they amount to a problem regarding the provision of a FAPE for Student. Issue Five is insufficient because it fails to provide District an awareness and understanding of the basis of the problem with Student's special education problem.

Issue Six of the amended complaint recites facts pertaining to discussions at a resolution session in which the District allegedly made representations concerning Student's placement and services. Issue Six still does not enunciate an issue, but instead asserts facts without stating how they amount to a problem regarding the provision of a FAPE for Student. The proposed resolution to Issue Six is unintelligible and confusing, alleges facts, and proposes a remedy which appears to be unrelated to the allegations in Issue six. Issue Six is insufficient because it fails to provide District an awareness and understanding of the basis of the problem with Student's special education program.

ORDER

1. Issues One, Five and Six of the amended complaint are insufficient.

2. For purposes of clarity in this order and to conform to the Determination of Sufficiency issued on May 30, 2012, Issues Three and Four of Student's original complaint are incorporated into Student's amended complaint and are deemed sufficient.

3. Parent is advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. In this case, Parent is again encouraged to contact OAH for assistance in amending the due process hearing request.

4. Student shall be permitted to file an amended complaint not later than 14 days from the date of this order.¹⁰ The amended complaint shall be one document that includes Issues Three and Four from the original complaint, and any further issues Student wishes to raise. No further amendments will be permitted thereafter.

5. If Student does not file an amended complaint within 14 days, the hearing shall proceed on Issues Three and Four only.

Dated: May 30, 2012

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings

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