

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT
AND NEW HAVEN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010060313

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 2, 2010, M. Lynn Hansen, attorney for Student, filed a Due Process Hearing Request¹ (complaint) against the Fremont Unified School District (Fremont) and the New Haven Unified School District (New Haven). On June 10, 2010, Laurie E. Reynolds, attorney for New Haven, filed a Notice of Insufficiency (NOI) as to Student's complaint. On June 11, 2010, Matthew Juhl-Darlington, attorney for Fremont, filed a 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 requirements prevent vague and confusing complaints, and promote fairness by providing the

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).

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

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 Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint raises seven issues, as follows.

Issue No. 1

Student asserts that she was denied a FAPE during the 2009-2010 school year (SY) when her placement within New Haven, through an inter-district transfer, was terminated.⁸ The issue further states that the removal of Student from the special day class (SDC) placement in New Haven and the offer of placement at SPECTRUM, which Student contends is inappropriate to meet her educational needs, is a denial of FAPE. The complaint identifies an individualized education program (IEP) of November 13, 2009, that placed Student in the SDC in New Haven. It alleges that on April 22, 2010, Fremont informed Student, through a letter, that she would resume her prior placement at SPECTRUM on May 3, 2010. It further alleges that on April 26, 2010, New Haven sent Student a letter informing her that it was revoking the inter-district transfer that had allowed her to attend the SDC in New Haven.

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 Student filed the complaint as an Expedited Motion for Stay-Put and a Request for Due Process Hearing. It appears that Student’s Issue No. 1 is both a motion for stay-put and an allegation of a denial of FAPE. The allegation of a denial of FAPE is examined for NOI purposes in this order. The substantive motion for stay-put will be addressed in a separate order.

Student has identified a problem relating to a proposal to change her placement for the 2009-2010 SY in that Fremont and New Haven proposed changing her placement from the SDC to SPECTRUM. She has alleged that SPECTRUM does not constitute a FAPE. Student has provided facts relating to the identified problem. Accordingly, Issue No. 1 is legally sufficient.

New Haven asserts that the Office of Administrative Hearings (OAH) lacks jurisdiction to consider the revocation of an inter-district transfer or to hear an appeal of an action taken with regard to an inter-district transfer. An NOI is not the proper means by which to seek determination of OAH's jurisdiction with respect to an inter-district transfer. The only determination to be made upon the filing of an NOI is the sufficiency of the complaint on its face. New Haven's contentions may be litigated at hearing as an affirmative defense, or may be addressed in a Motion to Dismiss supported by sufficient facts.

Issue No. 2

Student asserts that she was denied a FAPE for the 2008-2009 and 2009-2010 SYs because both Fremont and New Haven failed to offer services to address Student's anxiety disorder. The complaint provides sufficient related facts as to Student's anxiety disorder. Furthermore, from a reading of the complaint in its entirety, it can be ascertained that Student alleges the denial of FAPE allegation against Fremont for the entire time period because Fremont is the local education agency responsible for Student, based on residency. However, it is unclear if New Haven is alleged to be responsible for the provision of a FAPE for both 2008-2009 and 2009-2010 SYs or only a portion of that time period.

For example, Student asserts that Parents consented to a November 13, 2009 IEP that placed Student in a SDC in New Haven. It is unclear, however, if New Haven is alleged to have proposed an initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE to Student prior to November 13, 2009. Therefore, Issue No. 2 does not sufficiently identify the time period Student alleges New Haven denied her a FAPE. Issue No. 2 does not provide Fremont and New Haven with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. Accordingly, Issue No. 2 is insufficient.

Issue No. 3

Student asserts that she was denied a FAPE for the 2008-2009 and 2009-2010 SYs because both Fremont and New Haven failed to refer Student for a mental health assessment by Alameda County Behavioral Health Care Services. The complaint sets out sufficient facts related to the allegation that Student had mental health needs. However, Student again fails to identify the time period for which she alleges New Haven denied her a FAPE. As discussed above, it is unclear the specific time within the 2008-2009 and 2009-2010 SYs that New Haven was responsible for the provision of a FAPE to Student. Issue No. 3 does not provide Fremont and New Haven with sufficient information to know how to prepare for the

hearing and how to participate in resolution sessions and mediation. Accordingly, Issue No. 3 is legally insufficient.

Issue No. 4

Student asserts she was denied a FAPE for the 2008-2009 and 2009-2010 SYs because Fremont and New Haven failed to develop appropriate measurable goals. Again, Student fails to identify the time period within the 2008-2009 and 2009-2010 SYs for which she alleges a denial of FAPE against New Haven. Furthermore, within the body of Issue No. 4, Student asserts that she was denied a FAPE because she was not provided the appropriate designated instructional services (DIS). Therefore, it is unclear whether Student is also alleging a denial of FAPE based upon an alleged failure to provide appropriate DIS by Fremont and New Haven. Issue No. 4 does not provide Fremont and New Haven with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. Accordingly, Issue No. 4 is legally insufficient.

Issue No. 5

Student asserts that she was denied a FAPE because Fremont and New Haven failed to advise Parents of a continuum of alternative placements, and therefore, prevented her parents from meaningfully participating in the development of Student's educational program. Within the body of Issue No. 5 Student generically asserts that the denial of FAPE occurred during both the 2008-2009 and 2009-2010 SYs. However, the factual allegations point only to an October 12, 2009 letter from Fremont regarding alternative placements. Student fails to identify with any specificity which IEPs, during the two school years, she alleges Fremont or New Haven should have provided information on alternative placements. Again, the complaint fails to identify the time period alleged against New Haven. Issue No. 5 does not provide Fremont and New Haven with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. Accordingly, Issue No. 5 is legally insufficient.

Issue No. 6

Student asserts that she was denied a FAPE for the 2009-2010 SY when Fremont and New Haven predetermined her placement at SPECTRUM, beginning May 3, 2010. While the caption to Issue No. 6 alleges New Haven to have predetermined Student's placement, the allegations within the body of the issue are asserted only against Fremont. Therefore, it is unclear if the alleged denial of FAPE based on predetermination of placement is against New Haven as well. Issue No. 6 does not provide Fremont and New Haven with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. Accordingly, Issue No. 6 is legally insufficient.

Issue No. 7

Student asserts that she was denied a FAPE for the 2008-2009 and 2009-2010 SYs because Fremont and New Haven failed to offer Student an appropriate transition plan. While the caption to Issue No. 7 identifies both the 2008-2009 and 2009-2010 SYs, the allegations within the body of the issue identify a failure to develop an appropriate transition plan as part of a January 19, 2010 IEP. Therefore, Student fails to provide sufficient facts related to the alleged violation during the 2008-2009 and 2009-2010 SYs. Issue No. 7 does not provide Fremont and New Haven with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. Accordingly, Issue No. 7 is legally insufficient.

Student's proposed resolutions for Issue Nos. 1 through 6 request either that Student be returned to her placement in New Haven, with transportation, or be placed in a nonpublic school such as the Morgan Center, with transportation. Student does not state a specific remedy for Issue No. 7. Finally, Student seeks reimbursement for unidentified costs and expenses. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

ORDER

1. Issue No. 1 of Student's complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue Nos. 2 through 7 of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹
4. 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.

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue No. 1 in Student's complaint.

Dated: June 17, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings