

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. 2012010272

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On January 9, 2012, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Fairfield-Suisun Unified School District (District).

On January 19, 2012, the 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 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

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint.

Issue one alleges that the District’s offer of placement for Student was inappropriate. While the language next to the words “Problem/Complaint #1” is not clear, it is apparent from the language in the proposed resolution that Student’s parent disagrees with the placement offered on October 11, 2011.

Issue two alleges a dispute over whether Student should receive ASL services and also alleges the failure to provide an FM system. The District argues that Student fails to “provide evidence that Student requires ASL services....” However, there is no requirement that a party produce “evidence” in a complaint.

The complaint contains a large, blank space on page four, between the resolution for issue two the next issue. It is not clear if that space was intentionally left blank at the time of filing or was the result of a copying error. If Student had other allegations on that page,

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).

Student needs to file and serve a complete copy of the due process request. Based on the District's NOI, it appears that the District's copy of the complaint also contained that blank spot.

Issue three alleges that the "English Language, Arts goals" are inappropriate in the March 22, 2011 individualized educational program (IEP). The District objects that the resolution does not match the issue, but the issue itself is still clear and sufficient.

Issue four alleges that the specialized academic instruction Student has received for the past two years is too low. Once again, the District argues that the proposed resolution (general education placement for Student for certain classes) does not match the issue. However, that does not make the issue vague or unclear.

Issue five alleges that the occupational therapy instructor is not properly trained and the goals are too low. The District argues that Student's proposed resolution (terminate occupational therapy services) is unnecessary because Student's mother can withdraw her consent to such services. Once again, the proposed resolution does not make the issue vague or improper.

Issue six alleges that Student was forced to stop eating breakfast with general education students and proposes as a resolution that Student be mainstreamed for breakfast, recess, lunch and other times. The issue raises a least restrictive environment concern and is sufficient.

Issue seven alleges a procedural violation based on the District's failure to give the parent adequate time to review the independent educational evaluation with the assessor prior to the IEP meeting. Issue eight alleges a procedural violation based on the failure of the District to hear parental concerns during the meetings. The District argues that the parent failed to provide appropriate proposed resolutions for these two issues, so they should be deemed insufficient. However, the issues themselves are clear. There are plenty of other proposed resolutions in the complaint to assist the District with preparing for hearing and settlement. The failure to include proposed resolutions for these two procedural issues does not invalidate the complaint under these circumstances.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: January 20, 2012

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings