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. 2013070705 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On July 15, 2013 Parent on behalf of Student (Parent or Student) filed a Due Process Hearing Request[1] (complaint) naming Fairfield Suisun Unified School District (District).

On July 22, 2013, 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

Student's complaint alleges six claims, which are all insufficiently pled as discussed below.

1. Student's Issue One indicates Parent was notified on June 18, 2013, that Student's educational placement would remain a general education/FA placement, and that Parent is requesting Student be placed in a Deaf and Hard of Hearing (DHH)/FA class or a class that is geared toward DHH children. The ALJ disagrees with the District regarding its contention that Student's claim represents a re-opening of the 2012 settlement agreement. Rather, Parent has merely indicated that since the signing of the agreement, on February 15, 2012, Student's condition has worsened, and he has exhibited behavior tantrums, bedwetting, etc. Further, as remedy, Parent is requesting that Student's eligibility status be changed to DHH, and he be placed in a DHH placement or environment. Student's first claim is insufficient, only in that it fails to sufficiently identify (1) how Parent was notified about Student's placement, i.e., letter or IEP, and (2) what Student's current and/or proposed I individualized education plan (IEP) provides as placement for Student.

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[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).

2. Student's Issue Two indicates that Parent observed Student in his classroom during story time, and (1) Student was not seated near the teacher; (2) there was no FM system; and (3) there were no amplified speakers on. Student indicates that these, "as needed" accommodations are part of Student's 2012 IEP. The District erroneously argues that Student's contention regarding accommodations can only be valid if they are *required* rather than *as needed.* Issue Two is insufficient, however, as it (1) fails to provide the date and year in May that Parent observed the classroom; and (2) fails to indicate how Student's education was impaired by the failure to provide the accommodations.

3. Student's Issue Three indicates that in January 2013, Parent signed paperwork for Student to be mainstreamed, and that at the April 17, 2013 IEP meeting she was notified that Student had not been mainstreamed, and she was required to sign paperwork that Student would only be mainstreamed with an aide present. Issue Three is insufficient as it (2) fails to specifically identify the "paperwork"; i.e. what documents Parent is talking about; (2) fails to indicated if the paperwork required the District the mainstream Student, and for what periods of the school day; (3) how Parent was "forced" to sign paperwork; and why Student did or did not require an aide for mainstreaming. Further, Parent's proposed resolution to Issue Three indicates that the District has failed to notify her of changes, testing, assessments and service providers. This is actually an independent claim rather than a remedy, and should be listed as a claim, with factual support, i.e., who, what, where, when.

4. Student's Issue Four indicates that the District altered the March 15, 2012 and June 6, 2012, IEPs, and Parent is requesting that the alterations and/or misrepresentations be removed from Student's IEPs. Issue Four is insufficient on several levels. Student does not indicate what the IEPs stated prior to the alleged alterations. Parent does not indicate how the alterations affected Student's education.

5. Student's Issue Five requests Student be provided an American Sign Language (ALS) aide for the entire school day. Issue Five is insufficient as it provides no allegation of a problem, and does not provided any information or facts to indicate why Student requires an ALS aide or why he requires an aide for the entire day.

6. Student's Issue Six indicates that since February 15, 2012, Parent and Student have been harassed by the District, and District staff have shown up unannounced at Student's home as well as slandered and belittled Student. Issue Six purports a claim of harassment, which is beyond the scope of jurisdiction for a due process hearing. Issue Six is insufficient as it fails to identify a problem relating to the identification, evaluation, placement or provision of FAPE to Student.

In total, all six issues of Student's complaint are insufficiently pled to provide the District with the required notice of a description of the problem and the facts relating to the problem.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint [8]Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[9]

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: July 23, 2013

/s/
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

8 Ed. Code, § 56505.

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