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. 2018120785 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 19, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Fairfield-Suisun Unified School District. On January 2, 2019, Fairfield-Suisun filed a notice of insufficiency 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. (20 U.S.C. § 1415(b) & (c).) 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student filed the complaint on December 19, 2018, and Fairfield-Suisun filed a notice of insufficiency on January 2, 2018. Thus, the notice of insufficiency was timely filed.

Fairfield-Suisun's notice of insufficiency claims that Student's complaint failed to include a clear statement of facts related to the identification, evaluation, placement or provision of a free and appropriate education to the Student, and in some instances failed to state the nature of a claim. Because of this, it alleges that the complaint is insufficient.

Student's complaint alleges six claims, five of which are sufficient and one which is insufficient. The issues are discussed below.

Issue numbers one, two, three, four, and five are sufficiently pled to put Fairfield-Suisun on notice as to the basis of Student's claim.

Issue number six alleges Section 504 of the Rehabilitation Act and civil rights violations. The allegation provides neither a description nor includes any facts relating to the alleged violation and how it relates to a denial of a free and appropriate public education. It is also unclear if this allegation is within the Office of Administrative Hearing's jurisdiction without further description. Thus, the contention is insufficiently pled.

Parents are not presently represented by counsel. OAH has a handbook for the public that provides guidance for special education due process hearings which can be found at https://www.documents.dgs.ca.gov/oah/SE/Handbook.4.5.18.pdf. Parents are encouraged to consult this document.

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 the complaint. Parent is encouraged to contact OAH for assistance if he intends to amend the due process hearing request on behalf of Student.

ORDER

1. Issues one, two, three, four, and five of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issue six of Student's complaint is 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).[2]

4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on issues one, two, three, four, and five in Student's complaint.

DATE: January 3, 2019

DocuSigned by:
Cynthia Fritz
3054C9C1F7E040A...

CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings

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