

OHIO DEPARTMENT OF EDUCATION
OFFICE FOR EXCEPTIONAL CHILDREN

AUG 24 2009

IN THE MATTER OF:)
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Petitioner) Hearing Officer: Harry H. Taich, Esq.
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- and -)
)
ORANGE CITY)
SCHOOL DISTRICT)
)
Respondent)

**RULING ON CHALLENGE
TO SUFFICIENCY OF
DUE PROCESS COMPLAINT**

On or about August 7, 2009, the Petitioner, by and through his mother, filed a Due Process Complaint Notice and Request for a Due Process Hearing with the Orange City School District.

On August 18, 2009, the counsel for the Orange City School District requested that the IHO review the sufficiency of the Complaint Notice and Request for a Due Process Hearing filed by the Parent on behalf of her son. A copy of the Due Process Complaint Notice and Request for Due Process Hearing is attached hereto.

The School's counsel contends that the Complaint Notice does not meet the requirements of Section 615(b)(7)(A)(ii) of the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) (*See: 20 U.S.C. §1415(b)(7)*) and the Ohio Administrative Code ("OAC") 3301-51-05 (K)(8)(b). That Act provides that an impartial hearing officer, "shall make a determination on the face of the Notice whether the notification meets the requirements of subsection (b)(7)(A)(ii)." Subsection (b)(7)(A)(ii) of Section 615 states that the Complaint must include four items of information as defined in subparagraphs (I) to (IV) of the subsection. The issue

before this IHO is whether or not the Complaint Notice submitted in this case meets these four (4) requirements, as follows:

(I) The name of the child, the address of residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending.

The Complaint Notice herein states that the child's name is "§". The child's address is listed as: "§". It provides that he attends § School and, thus, contains all of the items of information required by subparagraph (b)(7)(A)(ii)(I).

(II) In the case of a homeless child or youth . . . available contact information for the child and the name of the school the child is attending.

The Complaint Notice does not state that the child is homeless. Absent a statement in the Complaint that the child is homeless, the Complaint Notice need not contain the information required by subparagraph (b)(7)(A)(ii)(II) for a homeless child or youth.

(III) A description of the nature of the problem of the child relating to such proposed initiation or refused initiation or change, including facts relating to such problem.

The Complaint Notice has listed several issues that are somewhat redundant, but certainly involve some detailed problems, a couple of which problems are listed below:

1. The School District failed to timely act on Parent's request for a change of placement to stop the violence to her son.

2. The School District in failing to timely act on Parent's request listed above caused her son's medical condition to become worse, resulting in her son missing school. It is reasonable to assume that the Parent is alleging a denial of FAPE due to this loss of school attendance.

The parent, in her description of the problems, does provide an adequate explanation of the nature of the problems with regard to matters that took place in this 2008-2009 school year. The Petitioner has adequately described problems on the face of her Complaint Notice. This Complaint Notice satisfies the requirements of subparagraph (b)(7)(A)(ii)(III).

IV. A proposed resolution of the problem to the extent known and available to the party at the time.

The Complaint Notice requests that, "I would like Orange School District to pay for 's tuition & fees for the 2009-2010 school year." Parent's proposed resolution is vague, since it does not name the institution where the tuition and fees are to be paid by the District. However, the complaint was prepared on August 1, 2009, and a request for the District to pay the tuition and fees for an out of District placement is clear on its face. That resolution for a denial of FAPE may have been the extent known and available to the Parent at that time. Therefore, the Complaint Notice satisfies the requirements of subparagraph (b)(7)(A)(ii)(IV).

This hearing officer, upon review of the Due Process Complaint Notice, does not agree with the School District's position and determines that Petitioner has adequately described the nature of some problems of the child and proposed resolutions of the problems as required in subsections (III) and (IV) above. For the reasons stated, the requirements of Section 615(b)(7)(A)(ii) have been met. Petitioner's Complaint Notice filed in this matter is sufficient.

For the reasons listed above, this IHO finds that the Complaint Notice contains all of the information required by Section 615(b)(7)(A)(ii) and OAC 3301-51-05 (K)(8)(b) and is, therefore, sufficient.

IT IS SO ORDERED.



HARRY H. TAICH, Hearing Officer

CERTIFICATE OF SERVICE

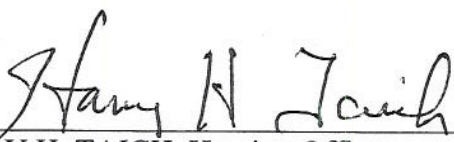
A copy of the foregoing Ruling was served upon the following on this 20th day of

August, 2009:

Dr. Nancy Wingenbach, Superintendent
Orange City School District
32000 Chagrin Blvd.
Cleveland, Ohio 44124-5922

Scott Peters, Esq.
David S. Hirt, Esq.
3 Summit Park Drive
Suite 400
Cleveland, OH 44131-2582

Christine Cline
Ohio Department of Education
Office for Exceptional Children
25 South Front Street, Mail-Stop 202
Columbus, Ohio 43215



HARRY H. TAICH, Hearing Officer