BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022080544

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

SEPTEMBER 2, 2022

On August 17, 2022, Parent, on behalf of Student, filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Francisco Unified School District as respondent. On September 1, 2022, San Francisco filed a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (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).

A complaint is sufficient if it: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution 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 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.] 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 46541, 46699.)

ISSUE SUFFICIENCY ANALYSIS

ISSUE NUMBER 1

Issue number one asserts that Student requested documents in 2018 from Brentwood Union School District in support of the claim that "the District" denied Student a FAPE when it failed to provide Student's records within five days, and delayed filing of Student's due process complaint. Brentwood Union School District is not named in this complaint and other allegations in the complaint state that Student has attended school in San Francisco Unified School District since the age of three. These allegations are inconsistent. Based on the pleadings, it is unclear whether the assertions refer to Student at all. The allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 1 is insufficiently pled.

ISSUE NUMBER 2

Issue number 2 asserts that "the District" failed to comply with Child Find in its failure to complete comprehensive evaluations in all areas as early as the 2014-2015 school year. The Student is referred to using male pronouns despite the fact Student is identified as a female. The allegations in issue number 2 allege a child find violation due to the failure to assess from the 2014-2015 through the 2022-2023 school years; however, no specific basis for asserting claims extending the statute of limitations has been pled. Nor does Student explain how child find was violated based on the allegations when Student was found eligible for special education in December of 2012. Overall, it is unclear that these allegations pertain to this Student. The allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow

San Francisco to prepare for resolution session, mediation, or hearing. Issue number 2 is insufficiently pled.

ISSUE NUMBER 3

Issue number 3 states that "the district denied FAPE by failing to offer her appropriate and measurable goals in any of his IEPs from 2014-2015 through the 2022-2023 school years. No specific basis for asserting claims extending the statute of limitations has been pled. The allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 3 is insufficiently pled.

ISSUE NUMBER 4

Issue number 4 alleges the district denied Student a FAPE by failing to deliver and implement services according to her IEPs from the 2012-2013 through the 2022-2023 "and present" school years. No specific basis for asserting claims extending the statute of limitations has been pled. Furthermore, the complaint fails to allege any specificity as to the services, supplementary aids and supports, or "accommodation/modifications" that were no implemented and the timeframes during which the specific failures to implement occurred. The allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 4 is insufficiently pled.

ISSUE NUMBER 5

Issue number 5 asserts that the district denied Student a FAPE when it "failed to provide and/or offer to provide student with an IEP reasonably calculate to enable her to make progress appropriate in light of her circumstances during the 2012-2013 through 2022-2023 present school years." No specific basis for asserting claims

extending the statute of limitations has been pled. Furthermore, the complaint fails to allege any specificity as to which aspects of which IEPs failed to meet IDEA standards, and which specific deficit occurred when. The allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 5 is insufficiently pled.

ISSUE NUMBER 6

Issue number 6 alleges, "the District denied student FAPE when it failed to make an appropriate offer of services and placement to student during the 2013-2014 through 2022-2023 present school years." No specific basis for asserting claims extending the statute of limitations has been pled. Additionally, despite this being a claim regarding failure to make an appropriate offer of services or placement, sub-issue a, alleges inadequacies regarding goals, which appear duplicative of the allegations in issue number 3. The allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 6 is insufficiently pled.

ISSUE NUMBER 7

Issue number 7 alleges that the district failed to provide prior written notice to Parents' request for private or non-public school placement. Issue number 7 is sufficiently pled.

ISSUE NUMBER 8

Issue number 8 alleges violations of Student's and Parents' rights under section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and other "relevant state and federal laws." This issue fails to allege Student's claims of violations of the specific laws alleged or the pertinent facts supporting alleged violations of the identified

laws. Furthermore, the issue alleges claims pursuant to unidentified "relevant state and federal laws" without identifying the statutes Student is asserting were violated. The allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 8 is insufficiently pled. It is also noted that the civil rights laws identified are not within OAH's jurisdiction.

ISSUE NUMBER 9

Issue number 9 alleges that the district denied Student a FAPE from the 2013-2015 through 2022-2023 school years by failing to design and implement a behavior intervention plan to address Student's behavioral needs. No basis for asserting claims extending the statute of limitations has been pled. Furthermore, it is unclear whether this claim duplicates prior issues asserting a failure to offer adequate goals and/or services to meet Student's needs. The allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 9 is insufficiently pled.

ISSUE NUMBER 10

Issue number 10 asserts that the district denied Student a FAPE by predetermining her placement, "disregarding her unique and individual needs in a continuum of service placements," and failing to provide parent with prior written notice. The issue statement ends with an open parenthesis that makes it appear the issue statement was not finished. The allegations fail to identify which offer of placement was predetermined; the facts or IDEA violation encompassed by the allegation that the district "disregarded Students unique and individual needs in a continuum of service placements; or when a prior written notice failed to be provided. The allegations in this issue fail to provide San Francisco with adequate notice of the

claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 10 is insufficiently pled.

ISSUE NUMBER 11

Issue number 11 asserts that "the district denied student a FAPE by failing to make a formal, specific, written offer of a FAPE which identified the proposed program (placement and related services), and the start date, frequency, location, and duration of the program in 2014-2015 through the 2022-2023 school years." No specific basis for asserting claims extending the statute of limitations has been pled. Furthermore, no specific IEP deficit is asserted. The allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 11 is insufficiently pled.

ISSUE NUMBER 12

Issue number 12 alleges a denial of parental participation from the 2014-2015 through the 2022-2023 school years but fails to allege a specific basis for asserting claims extending the statute of limitations. Additionally, the specific IEP team meetings that failed to include required IEP team members, or even the year in which the meeting occurred, were not identified. The allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 12 is insufficiently pled.

ISSUE NUMBER 13

Issue 13 alleges the district failed to complete timely triennial assessments during the 2021-2022 school year. Issue 13 is sufficiently pled.

ISSUE NUMBER 14

Issue 14 asserts that the District denied Student FAPE by failing to file for due process during the 2021-2022 and 2022-2023 school years. Issue number 14 is sufficiently pled.

ISSUE NUMBER 15

Issue number 15 asserts that district denied Student a FAPE during the 2014-2015 through 2022-2023 school years by failing to conduct an educationally related mental health services (ERMHS) assessment and by failing to offer educationally related mental health counseling services to Student. This complaint fails to allege a specific basis for asserting claims extending the statute of limitations. As a result, the allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 15 is insufficiently pled.

ISSUE NUMBER 16

Issue 16 alleges that the district denied Student a FAPE by failing to address bullying. However, the issue fails to identify when the bullying is alleged to have occurred or the facts describing the bullying. As a result, the allegations in this issue fail to provide San Francisco with adequate notice of the claims against it to allow San Francisco to prepare for resolution session, mediation, or hearing. Issue number 16 is insufficiently pled.

ORDER

1. Issues number 7, 13 and 14 of the complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 15, and 16 of the 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).
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. 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 Issues 7, 13, and 14 of Student's complaint.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings