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 No. 2014110740 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 18, 2014, Parents on behalf of Student filed a Due Process Hearing Request[1] (complaint) naming the San Francisco Unified School District. On December 3, 2014, District timely 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.[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

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[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

In her complaint, Student alleges that District denied her a free appropriate public education in the individualized educational programs it developed for her on September 6, 2013, October 17, 2014, and November 7, 2014. Student lists seven sub-claims as specific reasons why the IEP's did not provide her with a FAPE. Some of those claims are sufficiently pled while others are deficient, as discussed below.

In Issue One, Student contends that District has failed to provide her consistently with safe transportation to and from school with a one-to-one aide. Student claims that she has lost many school days during the present school year due to inadequate transportation vehicles or the lack of a one-to-one aide. However, Student's statement that she has lost transportation this year contradicts her earlier statement that her September 2013 IEP failed to offer her a FAPE. It is unclear from the issue whether the lack of transportation relates to all IEP's or just to the present 2014-2015 school year. Additionally, there are no facts given to explain why Student required a specifically sized vehicle to transport her to school or if a specifically sized vehicle is required by her IEP's. For these reasons, Student's Issue One is insufficiently pled.

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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).

In Issue Two, Student alleges that she requires individual speech and language therapy that incorporates adaptive augmentative communication services, including programming of her AAC device and consultation with all staff who work with her. Student contends that she was not provided with adequate speech and language therapy. However, Student fails to explain why she believes that her services are inadequate or describe any basis for their inadequacy. Student contends District failed to offer her a program that met her language needs, but fails to state why the program offered was not adequate and what she needed in addition to what District already provided. For these reasons, Issue Two is insufficiently pled as it relates to Student's claim of inadequate speech and language services.

In Issue Three, Student claims that District failed to provide her with staff adequately trained to address Student's physical therapy needs. Student does not state what staff was doing wrong or how they were not meeting her needs. Student also contends that District failed to offer her services in the area of physical therapy. However, she fails to state if her IEP's contained physical therapy services, and, if so, why the provided therapy was not adequate. Student fails to state what services she required that District was not providing and why she needed the services to access her education. For these reasons, Issue Three is insufficient as pled.

In Issue Four, Student contends that she required specialized academic instruction that would allow her to benefit from her education. Student contends she required a modified curriculum. However, Student does not allege how the IEP's failed to provide her with a modified curriculum that she needed to receive a FAPE. It is unclear from this issue what type of modifications Student needed and why. For these reasons, Issue Four is insufficient as pled.

In Issue Five, Student contends that District failed to provide her with a modified curriculum for three out of the four weeks of extended school year 2014, as required by her IEP. This issue alleges a failure to implement Student's IEP. As such it is adequately pled to put District on notice of the issue Student is raising.

In Issue Six, Student contends that her IEP required District to provide her with 50 minutes per week of assistive technology during the extended school year. Student contends that this was not provided during extended school year 2014. This claim is specific enough to put District on notice of Student's allegations and is therefore sufficient as pled.

In Issue Seven Student contends that District failed to implement her IEP during extended school year 2014 because it did not provide her with the AAC services required by her IEP. This issue is specific and therefore puts District on notice of Student's allegations. Claim seven is sufficient as pled.

District also contends that Student's proposed resolutions are not adequately pled. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Here, Student has

identified specific remedies she requests should she prevail at hearing. Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

ORDER

1. The portion of Issue Two alleging that District staff was not trained on her AAC device, and Issues Five, Six, and Seven of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. The portion of Issue Two alleging failure to provide adequate speech and language services, and Issues One, Three, and Four, of Student's 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).[8]

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on that portion of Issue Two found sufficient, and Issues Five, Six, and Seven of Student's complaint.

DATE: December 4, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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