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 DETERMINING AMENDED COMPLAINT SUFFICIENT IN PART AND INSUFFICIENT IN PART

OCTOBER 5, 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. Student' original complaint was deemed insufficient on September 2, 2022. Student was given 14 days to amend the complaint.

Student's amended complaint was filed on September 14, 2022. On September 28, 2022, San Francisco filed a Notice of Insufficiency as to the amended complaint, asserting that a number of the aspects of the complaint previously ruled insufficient,

were not corrected in the amended complaint. OAH did not receive a response from Student to the Notice of Insufficiency.

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

Footnote one of Student's complaint states. "Brief history and background facts give context to the issues and Petitioners allege those claims only which fall within the two-year applicable statute of limitations unless state or federal authority allow for claims beyond. Should the facts reveal a claim for a waiver of the statute of limitations, Petitioners respectfully request a waiver of the two-year statute of limitations in this matter. Further, Petitioners reserve the right to amend this complaint." (Student's First Amended Complaint, page 3, footnote number 1.) The complaint goes on to say,

> "Parent requests relief under the exception of the statute of limitations for all denials of FAPE resulting from District's violations of Student's rights due to their misrepresentations to Parent as highlighted herein Student's Due Process Complaint, including but not limited to the withholding of records and information from Parent as discussed above and as pled through this complaint, all of which is not only required to enable Parent to meaningfully participate and make decisions for her son but also required to be provided to Parent under state and federal law." (Student's complaint paragraph 32.)

The inconsistency of these statements results in several issues in the complaint being fatally unclear. Despite the statement in footnote one, several issues assert claims prior to August 18, 2020, which would be the limit based on the applicable two-year statute of limitations. Several rely on a reference to paragraph 32 as the basis for

extending the statute of limitations, without asserting how the statement applies to the issue pled. Every issue in which there is a conflict in the fact statements regarding whether Student seeks to assert claims beyond the statute of limitations is insufficient. Specifically these are: Issues 2, 3, 5, 6, 9, 10, 12, 15, and 16.

All other issues are sufficiently pled and give San Francisco adequate notice to prepare for resolution session, mediation, and hearing.

ORDER

1. Issues number 1, 4, 7, 11, 13, and 14 of the complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues number 2, 3, 5, 6, 9, 10, 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. No issue numbered 8 was included in this complaint. Nor was a sub-issue lettered A included under Issue number 6. The amended complaint must include consecutively numbered issues and consecutively lettered sub-issues.
6. If Student fails to file a timely amended complaint, the hearing shall

proceed only on Issues 1, 4, 7, 11, 13, and 14 of Student's complaint.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings