BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013050092 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 1, 2013, Parents, on behalf of Student, (Student) filed a Request for Due Process Hearing[1] (complaint) naming the San Francisco Unified School District (District).

On May 15, 2013, District filed a Notice of Insufficiency (NOI) 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. (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

[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).

to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] The pleading requirements should be *liberally* construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

Student's complaint contains 12 issues for hearing. All of the issues relate to District, and include facts alleging various violations by District against Student. Apart from Issue Six, each of the issues includes adequate supporting facts regarding the allegations being made against District and each provides adequate notice and an awareness of the issues forming the basis of the complaint to District. Therefore, as discussed below, Student's compliant is found sufficient as to eleven of the twelve issues.[7]

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

[4] Sen. Rep. No. 108-185, *supra*, at p. 34.

[5] *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.].

[6] 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).

[7] District's NOI appears to challenge the sufficiency of Student's complaint on the ground that several of the issues are without merit. Sufficiency review is not done based on such grounds. Rather, a complaint is sufficient if it identifies the problems or failures relating to District's obligation to provide a FAPE to Student, and provides facts relating to the problems, while identifying such proposed remedies that Student seeks regarding the identified problem(s) to the extent known and available to Student. Therefore, among others, sufficiency review is done based on the alleged issues and facts in the complaint and not

Issue One. Student's Issue One alleges that District denied Student a FAPE by denying Parents meaningful participation in the individualized educational program (IEP) process because District offered summary translation through an unqualified interpreter, at the December 19, 2012 IEP team meeting. Student's Issue One provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue One is sufficiently pled against District.

Issue Two. Student's Issue Two alleges that District denied Parents meaningful participation in the IEP process and thus denied Student a FAPE because District failed to translate into Spanish the IEP's and documents District provided to Parents on or around December 6, 2012. Student's Issue Two provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Two is sufficiently pled against District.

Issue Three. Here, Student alleges that District denied her a FAPE because District failed to have all required parties/member present at various IEP team meetings and dismissed required parties from some IEP team meetings without parental consent. In the complaint, Student identified specific IEP meetings where Student believes the violations occurred. Therefore, Student's Issue Three provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Three is sufficiently pled against District.

Issue Four. Student's Issue Four alleges that District denied Parents their right to be part of the decision-making process regarding Student's placement, and thus denied Student a FAPE because, between 2010 and 2013, District ignored Parents' protests regarding inappropriate instruction at Student's special day class (SDC). Issue Four provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Four is sufficiently pled against District.

Issue Five. Issue Five alleges that District denied Student a FAPE because District failed to maintain Student's records as required by law. The issue identifies both the statute and the case law that Student relied upon and provides a description of things that Student alleges that District failed to do under the cited statute and case law. Thus, Issue Five provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Five is sufficiently pled against District.

Issue Six. Student's Issue Six alleges that District denied Student a FAPE because District failed to create an educational program designed to address Student's unique needs. While Issue Six argues that Student was placed in an overly-restrictive educational setting, it fails to provide any information regarding how, or what part of, Student's educational program failed to address Student's unique needs. It also fails to identify what educational

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whether Student could or would ultimately prevail on such issues. Thus, District is not precluded from raising any and all appropriate defenses to the complaint and/or issues.

program District should have created. Therefore, Issue Six fails to provide District with the required notice, a description of the problem, and the facts relating to the problem(s) alleged by Student. It fails to provide District with an awareness or understanding of the issues forming the basis of this issue, and as such, Student's Issue Six is insufficiently against District.

Issue Seven. Student's Issue Seven alleges that District denied him a FAPE because District utilized Student's size and age as placement criteria for Student rather than her unique needs. In this issue, Student provides supporting facts and identifies the relevant IEP/FAPE offer. Therefore, Issue Seven provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Seven is sufficiently pled against District.

Issue Eight. Issue Eight alleges that District denied Student a FAPE by placing Student in an overly restrictive educational environment despite District stating that Student belongs in a higher-functioning class at the January 2010 IEP team meeting. Student's Issue Eight identifies the relevant IEP relating to the alleged failures and disputed placement. Thus, Issue Eight provides District an awareness and understanding of the issues forming the basis of the allegation, and accordingly, Student's Issue Eight is sufficiently pled against District.

Issue Nine. Student's Issue Nine is similar to Issue Eight, and it alleges that District denied Student a FAPE because District failed to place Student in the least restrictive environment as required by law. Here, Student alleges that the SDC is too restrictive and that Student should have been "fully mainstreamed in a general education setting with aide and supports. Issue Nine provides adequate supporting facts and identifies the problems forming the basis of the alleged violation. Issue Nine provides District an awareness of the issues forming the basis of the allegation. Accordingly, Student's Issue Nine is sufficiently pled against District.

Issue Ten. Student's Issue Ten alleges that District denied him a FAPE because District failed to assess Student in all areas of offer suspected disability. Among other allegations in support of this issue, Student alleges that in May 2012, District suggested that Parents obtain a neuropsychological assessment of Student regarding attention deficit hyperactive disorder, but District failed to offer Parents reimbursement for the assessment. When one looks at the supporting facts, Issue Ten is a bit confusing. However, in light of the direction to liberally construe the pleading requirements under IDEA, Issue Ten provides District with enough information and an awareness of the issues forming the basis of the allegation. Accordingly, Student's Issue Ten is sufficiently pled against District.

Issue Eleven. Student's Issue Eleven alleges that District denied her a FAPE because District's over burdensome policy regarding independent educational evaluation (IEE) at public expense denied Parents their right to an IEE. In this issue, Student identifies the alleged problems regarding Parents' request for an IEE and provides adequate facts regarding the alleged violation(s). Therefore, Student's Issue Eleven provides District an awareness

and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Eleven is sufficiently pled against District.

Issue Twelve. Student's Issue Twelve alleges that District denied her a FAPE because District failed to provide Parents prior written notice on five instances. The complaint identified the occasions when Student alleges that the violations occurred. Thus, for sufficiency purposes, Issue Twelve provides District an awareness and understanding of the issues forming the basis of the allegation. Accordingly, Student's Issue Twelve is sufficiently pled against District.

Overall, Student's **Issues One through Five** and **Issues Seven through Twelve** put District on notice as to the basis of Student's claims and permit District the opportunity to respond to the complaint. Further, these issues provide District with an awareness and/or understanding of the allegations forming the basis of each issue, so that District can participate in a resolution session and mediation. **Accordingly, Student's Issues One through Five and Issues Seven through Twelve are sufficiently pled.**

Regarding Student **Issue Six,** it fails to allege sufficient facts supporting a claim and fails to put District on notice as to the basis of Student's claim. Further, it fails to allow District the opportunity to respond to the complaint or participate in a resolution session and mediation. Therefore, **Issue Six is insufficiently pled.**

Proposed Remedies

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).) The proposed resolutions stated in Student's complaint are well-defined, and as such they meet the statutorily required standard of stating a resolution to the extent known and available at this time.

Student's complaint sufficiently identified many remedies/proposed resolutions requested by Student. Specifically, Student requests that OAH direct District to: 1) provide Student with compensatory education and services including individual tutoring, and instruction by a non-public agency (NPA); 2) place Student in a general education setting for all academic classes for the 2013-2014 school year with a one-to-one trained and experienced paraprofessional support; 3) convene an IEP team meeting that meets all legal requirements, to plan for Student's transition to general education; 4) provide Student's teachers and paraprofessional with training as needed to meet Student's needs; 5) provide Parents with complete educational records, and translate all documents into Spanish for Parents; and 6) provide Parents with research-based behavioral intervention services due to his autism. As provided in Student's complaint, Student's proposed resolutions are sufficiently identified.

ORDER

1. Issues One through Five and Seven through Twelve in Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii), as limited above.

2. **Issue Six of Student's complaint is insufficiently under title 20 United States Code section 1415(c)(2)(D).**

3. Student shall be permitted to file an amended complaint regarding Issue Six 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 regarding Issue Six, the hearing shall proceed only on Issues One through Five and Issues Seven through Twelve in Student's complaint.

IT IS ORDERED

Dated: May 20, 2013

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

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