BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN JOSE UNIFIED SCHOOL DISTRICT AND DOWNTOWN COLLEGE PREP.	OAH Case No. 2014050871 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 16, 2014, Student filed a Due Process Hearing Request naming San Jose Unified School District (San Jose) and Downtown College Prep (Downtown Prep).[1] On May 28, 2014, Student filed an amended complaint

On June 9, 2014, San Jose filed a Notice of Insufficiency as to Issues three, four, five, six, nine, eleven, and fourteen of 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 Individuals with Disabilities Education Act 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

San Jose only challenges the sufficiency of issues three, four, five, six, nine, eleven, and fourteen of Student's complaint. Accordingly, only the sufficiency of those issues is addressed in this Order. Of the contested issues, four, six, and nine are sufficiently pled to put San Jose on notice as to the basis of Student's claims. Specifically, issue four asserts a denial of FAPE from May 2012 to present regarding an alleged failure to address Student's mental health needs; issue six alleges a denial of FAPE for the failure to provide specific mental health services (namely a structured, consistent, and predictable therapeutic milieu); and issue nine alleges a procedural denial of FAPE regarding San Jose's asserted failure to participate in an IEP team meeting until February 2014.

The remaining issues are discussed below.

Issue three states, "[g]iven that Student has no viable friendships, was it incumbent upon the District and Downtown College Prep to take heed of parent's reports of these difficulties rather than relying solely upon Student's reports since it is widely known and accepted that Students (particularly adolescent males) under-report their social difficulties?"

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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).

It is unclear if Student is challenging the adequacy of assessments related to social emotional needs or the failure to meet an identified area of need. Accordingly, this issue provides insufficient information to meet the requirements set forth in title 20 United States Code section 1415(b)(7)(A) and does not provide sufficient information for San Jose and Downtown Prep to adequately prepare for the hearing.

Issue five states, "[d]id the District and Downtown College Prep deny Student a FAPE by failing to provide him with sufficient and appropriate strategies and interventions which should have included convening an emergency IEP [individualized education program] when it became clear that Student's mental health issues were increasing and pervasive?" It is unclear whether Student is alleging a substantive or procedural denial of FAPE and for what time period. It appears that Student may be alleging a procedural denial of FAPE, namely the failure to hold an IEP team meeting. If so, Student fails to assert when that alleged IEP team meeting should have been held. Student may also be alleging that San Jose and Downtown Prep failed to meet his mental health needs. If it is the latter, Student should specifically include the alleged strategies and interventions that should have been included in an IEP, and in which IEP these should have been included but were not. In light of the varying interpretations of this alleged issue, it is deemed insufficient.

Issue 11 states, "[s]hould the District have called an emergency IEP when it learned that there was a significant change in circumstances which prevented Student from attending school on a regular basis due to an exacerbation of his OCD [obsessive compulsive disorder], Depression, and Ritualistic Behaviors?" Again, this issue could be interpreted as alleging a procedural denial of FAPE regarding the failure to hold an IEP meeting. If so, Student must allege when that meeting should have been held. Alternatively, Student may be alleging that San Jose failed to either offer or provide an appropriate program to meet his mental health needs. This ambiguity and the omission of critical facts, such as the time when IEP team meetings were or should have been held, render this issue insufficient.

Issue 14 states, "[a]re Student's very poor reading, math, and writing skills a result of educational neglect, lack of intervention and remediation?" Student may be asserting that San Jose and Downtown Prep failed to offer or provide Student a FAPE regarding his identified needs in the area of reading, math, and written language. However, allegations of "educational neglect" and "lack of intervention and remediation" do not necessarily mean Student is alleging a denial of FAPE. Accordingly, this issue is deemed insufficient.

ORDER

1. Contested issues four, six, and nine of Student's complaint are deemed sufficient under title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

2. Contested issues three, five, eleven, and fourteen of Student's complaint are insufficiently pled under section title 20 United States Code 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 against San Jose only on Issues one, two, four, six, seven, eight, nine, ten, twelve, and thirteen.[9]

IT IS SO ORDERED

DATE: June 23, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings

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

[9] Downtown Prep did not challenge the sufficiency of Student's complaint. No finding of insufficiency, therefore, is made regarding allegations against Downtown Prep and all issues will proceed against it as pled unless Student files an amended complaint.