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. 2013020986 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 28, 2013 Student filed a Due Process Hearing Request[1] (complaint) naming San Francisco Unified School District (District) as the respondent.

On March 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.[3] These requirements prevent vague and confusing complaints, and promote fairness by providing the

[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

Student's complaint alleges seven claims, which are all insufficiently pled as discussed below. Problem number one states that on the first day of school, a teacher named Mr. Richardson told Parents that another teacher named Ms. Maskin would be Student's main teacher, although Student was on Mr. Richardson's roster. Problem number two states that Ms. Maskin wore heavy perfume and refused to accommodate Student's medical sensitivities. Problem number three states that Ms. Maskin insisted that Student's medical condition be documented before she would honor it. Problem number four states that Student was improperly removed from the classroom because he was crying. Problem number five states that Student's toileting needs were not properly accommodated, and refers to the "last IEP at N.T." which apparently contained some information regarding this issue. Problem number six refers to alleged confidentiality violations, consisting of unidentified person or persons discussing unidentified confidential information about Student with his (unnamed) current teacher, even though Student had left school. Problem number seven refers to a September 12, 2012, individualized education program meeting, overseen by a person named Kristin Devine at a location named "New Traditions, " and complaining that the team did not offer to service Student and said "this is not the right school for your son."

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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).

Student's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problems and the facts relating to the problem. The complaint does not establish any context regarding Student's special education program. It does not reflect whether Student had been assessed and found eligible for special education and related services, whether Student had an existing IEP, nor what accommodations or modifications any such IEP may have contained. Therefore it is impossible to determine whether the complaints one through five relate to District's obligations to assess Student, or to make him an IEP offer of appropriate placement and services, or instead to alleged failures to implement an established program, or all of the above. The complaint also confusingly names persons and places "Kristin Devine, New Traditions," without identifying their roles. For example, it appears from problems number five and seven that Student was once at a school called "New Traditions" where he had an IEP, but is unclear whether that was a District placement, or how that school and that IEP was related to the September 12, 2012, IEP meeting. It also appears from problem number seven that Student has left one or another of the schools at issue, but it is not clear which one. Without such factual context, the complaint fails to provide the required notice of a description of the problems and the facts relating to the problem.[8]

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.[9] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

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8 District's NOI also argues that certain of the claims in the complaint are outside OAH jurisdiction, however since District did not bring a formal Motion to Dismiss, that argument is not addressed here. An NOI is limited to the sufficiency of the notice provided, not the legal merits of the allegations.

9 Ed. Code, § 56505.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[10]

3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: March 15, 2013

/s/
JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

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