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 SUFFICIENCY OF SECOND AMENDED DUE PROCESS COMPLAINT

NOVEMBER 8, 2022

On August 17, 2022, Parent, on behalf of Student, filed a Due Process Hearing Request, also called a complaint, with the Office of Administrative Hearings, called OAH, naming San Francisco Unified School District as respondent. On October 19, 2022, Student filed a second amended complaint. In the future, Student is instructed to clearly title each amendment ordinally, for example, first amended complaint, second amended complaint, or third amended complaint. On November 3, 2022, San Francisco filed a Notice of Insufficiency asserting that the second amended complaint failed to plead sufficient issues and failed to correct several of the identified insufficiencies from the prior two Orders determining Student's complaints insufficient.

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).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Here, a timely Notice of Insufficiency was filed.

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.)

SUFFICIENCY ANALYSIS

STATUTE OF LIMITATIONS

Several of the issues pled assert a time frame for the issue as a whole in the initial issue statement. Those time frames will control the issue plead. As to those that assert time frames that extend more than two-years prior to filing, Student has now clearly stated that she is asserting claims prior to the basic two-year statute of limitations. It will be Student's burden to prove entitlement to extend the statute of limitations at hearing. As to issues asserting allegations during a time frame that does not align with Student's birthday or educational history, nothing in this order prevents San Francisco from seeking clarification during the prehearing conference. Overall, San Francisco has enough information in this complaint to prepare for resolution session, mediation, and hearing.

CLEAR IDENTIFICATION OF STUDENT

Overall, Student is admonished for failing to correct errors that have been previously identified. San Francisco's continuing complaints that this general lack of care in editing renders the complaint unintelligible, however, are not persuasive. Many of the errors have been corrected, as San Francisco acknowledges. The second amended complaint puts San Francisco sufficiently on notice as to which Student is making allegations of IDEA violations. As to those allegations San Francisco asserts do

not pertain to disabilities Student has demonstrated, nothing in this order prevents San Francisco from seeking clarification during the Prehearing Conference.

ISSUE NUMBER 7 INSUFFICIENT

Issue number 7 alleges that San Francisco denied Student a FAPE by failing to provide prior written notices in response to Parent's requests for a private school or non-public school placement. This issue is not sufficiently pled. As alleged, the issue stated that district "did not issue a prior written notice in response to Parent's numerus request for a different school placement." (*sic*) The issue fails to identify the dates of the requests. Given the broad time period pled in other aspects of the complaint, this issue fails to give San Francisco adequate notice to prepare for resolution session, mediation or hearing.

ORDER

1. Issues number 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, and 15 of the complaint are sufficiently pled under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue number 7 of the complaint is 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. If Student fails to file a timely amended complaint, the case will proceed on

Issues 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, and 15 as currently scheduled.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings