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. 2013020409 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 11, 2013, Student filed a Due Process Hearing Request[1] (complaint) naming the San Francisco Unified School District (District). On February 26, 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

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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]

Expedited Hearings

Federal law regulates the circumstances and processes under which students eligible for special education may be disciplined by school districts. (See 20 U.S.C. § 1415(k).) School districts are prohibited from expelling a student with a disability for misbehavior that is a manifestation of the disability. (*Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470.) The school must conduct a review meeting to determine whether the conduct in question was a manifestation of the student's disability. (20 U.S.C. § 1415(k)(1)(E)).

The parent of a student with a disability who disagrees with either a school's decision to change the student's educational placement as a disciplinary measure, or the manifestation determination may appeal the placement or determination. (20 U.S.C. § 1415(k)(3)(A).) Under the IDEA, an appeal of either the manifestation determination, or a decision regarding placement due to a disciplinary action, is entitled to an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A).) A school district may also avail itself of an expedited due process hearing if it believes that maintaining the pupil's current placement is substantially likely to result in injury to the child or others. These are the only situations in which an expedited due process hearing is permitted. An expedited hearing shall be held within 20 school days of

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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).

the date the hearing is requested. A decision shall be made by the hearing officer within 10 school days thereafter. (20 U.S.C. § 1415(k)(4)(B).) Title 20 United States Code section 1415(k), which governs the expedited due process hearing procedures, does not allow for a NOI as to issues for which an expedited hearing must be conducted.

DISCUSSION

Student's complaint raises six issues, some of which are subject to the expedited hearing procedures. The Office of Administrative Hearings (OAH) should have set this matter for dual hearing dates to allow for both an expedited hearing and a non-expedited hearing. As discussed below, OAH shall issue a new scheduling order which shall set both an expedited and and non-expedited hearing schedule for this matter.

Issues Subject to Expedited Proceedings

Student's Issues 2 and 3 raise claims concerning the convening of an manifestation determination meeting, called a "manifestation determination IEP [individualized education program]," and challenge District's determination of whether Student's behavior was related to his disability and District's proposed change in placement due to the manifestation determination. These issues are subject to the expedited hearing proceedings. Accordingly, Student's Issues 2 and 3 are not subject to a NOI.

Issues Subject to Non-Expedited Proceedings

Student's Issue 1 asserts that he was denied a FAPE when District "enrolled" Student in a "co-taught" regular education classroom at the start of the 2012 – 2013 school year without prior written notice. A reading of the entire complaint reveals that Student's primary disagreement with his placement in regular education was that it did not provide for a smaller, more structured setting, with additional services which Parent believed were required for the provision of a FAPE.

Student's Issue 4 asserts that District failed to conduct assessments agreed to at the December 2012 manifestation determination meeting. Student's Issue 5 asserts that District's offer of placement and services contained in the February 6, 2013 IEP fails to offer Student a FAPE. Student alleges sufficient facts and raises specific problems in Issues 1, 4 and 5 to put District on notice of the issues forming the basis of the complaint. District is provided sufficient notice so that it can prepare a defense, and participate in a resolution session and mediation.

Student's Issue 6 asserts that based upon the violations alleged in the other issues, District violated Student's civil rights. This issue, for purposes of the NOI, is sufficiently pled to provide District with a sufficient factual basis and notice so that it can prepare a defense, and participate in a resolution session and mediation. Whether the issue is within

the jurisdiction of OAH and whether it is subject to a motion to dismiss is not addressed in this NOI order. Accordingly, Student's Issues 1, 4, 5 and 6 are legally sufficient.

ORDER

1. Student's Issues 2 and 3 are appropriate for an expedited due process hearing and therefore are not subject to a NOI.

2. OAH shall issue a new scheduling order with both expedited and non-expedited dates.

3. The complaint is sufficient as to Issues 1, 4, 5 and 6 under title 20 United States Code section 1415(b)(7)(A)(ii).

Dated: March 6, 2013

/s/
BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings