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. 2018040786 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 18, 2018, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming San Francisco Unified School District. On May 2, 2018, San Francisco filed a Notice of Insufficiency 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. (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).

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 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 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

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) 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 46,540-46541, 46699.)

DISCUSSION

Looking at the four corners of Student's complaint, issues and proposed resolutions, Student has alleged that beginning September 2016,[2] San Francisco denied Student a Free and Appropriate Public Education by:

1. Placing Student in a moderate to severe Special Day Class with a one to one nurse, a one to one aide, speech and language services twice a week for 15 minutes with a temporary increases of three times a week;

2. Failing to provide sufficient direct services to Student;

3. Failing to provide an Applied Behavior Analysis provider to develop functional skills and a functional communications system;

4. Failing to hold the February 26, 2018 Individualized Education Program team meeting with the essential members of the team (Student's nurse); and failing to provide Student with documentation during the meeting;

5. Cancelling the April 2, 2018 IEP meeting, scheduled to discuss the ABA behavior analyst's observations of Student;

6. Failing to provide an activity/picture schedule developed by an ABA provider for Student's use in the classroom and at home;

7. Failing to provide toilet training and a diapering monitor;

8. Failing to provide home to school transportation with a one to one nurse;

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[2] This is subject to the two year statute of limitations.

9. Failing to deliver speech and language and other related services as a pull-out service in a separate classroom to avoid distractions; and

10. Failing to provide Student with a quiet room for sensory breaks during the day.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Student's proposed resolutions requests San Francisco to provide ABA services. 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 amended complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Therefore, Student's statement of the claims is sufficient.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: May 03, 2018

DocuSigned by:
Deborah MyersCregar
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DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings