

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. 2015080143

ORDER DENYING NOTICE OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On July 28, 2015 Student filed a due process hearing request¹ (complaint) naming San Francisco Unified School District. On August 7, 2015, 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 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

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).

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.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 the following facts: District offered inadequate assistive technology and adaptive augmentative communication and speech and language services; District did not assess and did not offer occupational therapy and physical therapy; District did not offer any vision services; Student did not benefit from her education and did not progress on her goals; District held IEP team meetings on November 6, 2014, January 22, 2015, February 9, 2015, March 12, 2015, April 7, 2015, May 14, 2015 and May 27, 2015, made changes to offers at each IEP team meeting, and all of which denied Student a free appropriate public education; and District’s June 30, 2015 prior written notice denied Student a FAPE.

Although Student did not specifically number each issue and subissue, the complaint identifies that District denied Student a FAPE at the November 6, 2014 IEP team meeting: (1) by offering a placement which included a teacher student ratio that was too high for Student; (2) because District’s offer of 120 minutes of speech and language therapy did not meet Student’s speech and language and adaptive augmentative communication needs; (3) because District’s offer of assistive technology and adaptive augmentative

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).

communication services were inadequate; (4) because District did not assess and offer assistive technology and adaptive augmentative communication at the November 6, 2014 IEP causing Student not to progress on her goals and not to receive educational benefit; (5) because District did not assess or offer any occupational therapy or physical therapy services causing Student not to progress on her goals and not to receive educational benefit; and (6) because District did not offer any vision services causing Student not to progress on her goals and not to receive educational benefit. Although District made changes to the IEP offer at the IEP team meetings on January 22, 2015, February 9, 2015, March 12, 2015, April 7, 2015, May 14, 2015 and May 27, 2015, the offers denied Student a FAPE. Further, District's June 20, 2015 prior written notice denied Student a FAPE: (1) by offering a placement which included a teacher student ratio that was too high for Student; (2) because District's offer of 45 minutes per week of speech and language therapy did not meet Student's speech and language and adaptive augmentative communication needs; (3) because District's offer of 30 minutes per week of occupational therapy is inadequate and she requires that service to be embedded into her program; (4) because District's offer of physical therapy is inadequate; (5) because District did not offer a specific amount of nursing services, and the offer of "as needed to assist and consult with classroom staff for [Student's] medical needs" was inappropriate; and (6) because District's failure to offer a specific amount of nursing services on the IEP denied meaningful parental participation in the IEP process.

The facts in the complaint are sufficient to put District on notice of the issues stated above, and provided adequate related facts about the problem to permit District to respond to the complaint, participate in a resolution session and mediation. As a remedy, Student requests placement in The Bridge School, a non-public school, transportation to the non-public school, and reimbursement for all educational costs from November 27, 2014. Student is not required to allege each issue with the level of specificity demanded by District when Student already satisfied the minimal notice requirements under the IDEA. Student properly alleged her issues and requested specific remedies.

ORDER

1. The complaint is sufficiently pled under section title 20 United States Code 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

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

DATE: August 10, 2015

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings

