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. 2016080499 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 10, 2016, Parent on behalf of Student filed a request for a due process hearing[1] (complaint) with the Office of Administrative Hearings naming the San Francisco Unified School District. On August 26, 2016, San Francisco Unified filed a joint pleading entitled Notice of Insufficiency/Motion to Dismiss. Student timely filed an opposition to San Francisco Unified's motion to dismiss on August 30, 2016.

This order addresses San Francisco Unified's notice of insufficiency. Its motion to dismiss will be addressed in a separate order.[2]

APPLICABLE LAW AND DISCUSSION

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings 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).)

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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 U.S.C. section 1415(b)(7)(A).

[2] In the future, San Francisco Unified is requested to file an NOI and Motion to Dismiss as separate pleadings if San Francisco Unified wishes each to be considered and ruled upon.

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 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.)

In this case, Student filed her complaint on August 10, 2016. Her proof of service indicates that her counsel faxed copies of the complaint to OAH and to San Francisco Unified on that date, and San Francisco Unified filed a notice of legal representation that day. San Francisco Unified filed its notice of insufficiency on August 26, 2016; 16 days after Student filed her complaint. San Francisco Unified does not contend that it failed to receive the complaint on the date indicated in Student's proof of service. Parties have 15 days to file a notice of insufficiency. San Francisco failed to meet that statutory timeline. Its notice of insufficiency is untimely, and Student's complaint is therefore deemed sufficient.[3]

Furthermore, San Francisco Unified's joint motions do not address the standards for a notice of insufficiency and fail to include any discussion or argument as to why Student's complaint is insufficient. The only issue discussed in the motion is why Student has failed to adequately raise an exception to the two-year statute of limitations. Even if San Francisco

[3] San Francisco Unified states in its motion that Student filed her complaint on August 8, 2016. It is unclear on what this filing date is based.

Unified's notice of insufficiency were timely, it fails to state a basis for finding Student's complaint insufficient.

ORDER

1. The complaint is deemed sufficient under title 20 United States Code section 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 31, 2016

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings