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 NUMBER 2019080061

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 1, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Francisco Unified School District. On August 12, 2019, San Francisco filed a Notice of Insufficiency as to the complaint. Student filed an opposition to San Francisco's Notice of Insufficiency on August 14, 2019.

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 the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes that it has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(c); Ed. Code, § 56502, subd. (d)(1).

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; *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

San Francisco alleges that Student's complaint is insufficient because he served an incomplete complaint and is missing pages 32 through 35. Student contends that the complaint is sufficient and San Francisco's Notice of Insufficiency is untimely.

Student filed a complaint on August 1, 2019, and San Francisco filed its Notice of Insufficiency on August 12, 2019. Thus, San Francisco's Notice of Insufficiency was timely filed.

A party's complaint is sufficient if it meets the legal requirements within the four corners of the complaint. Here, the complaint is 46 pages and OAH received it in its entirety. It alleges that San Francisco denied Student a FAPE for a number of procedural and substantive violations since July 2017 including:

- failing to timely and properly evaluate Student in all areas of suspected disability;
- failing to assess under Education Code section 56320;
- failing to develop appropriate individual education programs, hereafter called IEP, since July 2017;
- failing to keep Student safe;
- ignoring Parents' involvement in the IEP process;
- failing to provide procedural safeguards in Parent's native language;
- failing to have all appropriate IEP team members at the IEP team meetings;
- changing Student's placement without Parent's consent;
- failing to stay put the 2017 IEP after Parent's request;

- predetermining the 2018-2019 IEP offer;
- failing to provide all IEP related documents into Parent's native language; and
- failing to provide Student's records.

The complaint identifies the issues and adequate facts about the them to put San Francisco on notice in order to respond, and participate in a resolution session and mediation. Thus, the complaint is sufficient in its entirety.

San Francisco, however, alleges that it did not receive a portion of Student's complaint, specifically pages 32 through 35. While this may be correct, a notice of insufficiency is not the correct vehicle through which San Francisco can seek relief from its assertion because, on its face, the complete complaint is sufficient. Thus, San Francisco's notice of determination of sufficiency is denied.

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.

DocuSigned by:
Cynthia Fritz
3054C9C1F7E040A...

DATED: August 16, 2019

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings