BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. THE NEW SCHOOL OF SAN FRANCISCO.	OAH Case No. 2017060552 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On June 12, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming The New School of San Francisco. On June 20, 2017, School timely 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 broad remedial purposes of the IDEA and the relative informality of the due process hearings

[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).

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

Some of the facts alleged in Student's complaint are insufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies issues and related facts about the problems, however, some are not specific enough to permit District to respond to the complaint and participate in a resolution session and mediation. Although the complaint does not specifically enumerate the issues, Student articulates the below issues within the complaint which are sufficiently pled.[2]

1) Did School deny Student a free appropriate public education during the 2016-2017 school year by failing to provide a safe and secure place for Student to calm down?

2) Did School deny Student a FAPE by removing transportation from Student's individualized education program?

3) Did School deny Student a FAPE during the 2016-2017 school year by failing to provide Student with behavior support to ensure Student is not removed from class, or that his classroom is not evacuated when he has a tantrum?

4) Did School deny Student a FAPE during the 2016-2017 school year by failing provide homework for Student?

5) Did School deny Student a FAPE during the 2016-2017 school year by failing to provide Parent with complete information regarding behavior incidents therefore inhibiting her ability to participate in the IEP process?

The rest of the complaint is overly vague as it alleges numerous other facts, but does not state how the facts amount to a denial of FAPE. Student alleges there was an incident with a T-shirt, but does not state how that amounts to a denial of FAPE. Student also alleges

[2] The issues have been reframed for clarity, and to align the issues statements with statutory language. If Parent, on behalf of Student, wishes to clarify the issues that OAH has identified, Student will need to file an amended complaint with the clarifying information.

School lacks support for African American families, but does not state how that amounts to a denial of FAPE for Student.

Student's proposed resolution requests additional staff to support Student at School. 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 resolution stated in Student's complaint is not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues One, two, three, four, and five of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. All other facts and issues alleged in Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues one, two, three, four, and five listed above.

DATE: June 23, 2017

DocuSigned by:
Linda Johnson
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LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings

[3] The filing of an amended complaint will restart the applicable timelines for a due process hearing.