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. 2014090303 ORDER DETERMINING COMPLAINT SUFFICIENT IN PART AND DEFICIENT IN PART

On September 8, 2014, Student filed a Due Process Hearing Request[1] (complaint) naming the San Francisco Unified School District.

On September 23, 2014, San Francisco timely 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 (FAPE) 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 requirements prevent vague and confusing complaints, and promote fairness by providing the

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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 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).

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 11 claims, some of which are sufficient and some which are insufficient. Basically, Student alleges that he enrolled in San Francisco for the second semester of fifth grade in January 2014. He asserts that when his mother requested that San Francisco assess him for special education eligibility, San Francisco failed to do a complete and adequate assessment. He contends that San Francisco incorrectly failed to find him eligible for special education and related services, instead offering to only provide him with an inadequate 504 plan. Student alleges that his failing grades, anxiety, and the findings from an independent assessment, should have put San Francisco on notice that he was a child with a disability who required special education services. Finally, Student alleges that San Francisco failed to place him at his neighborhood middle school for the 2014-2015 school year, which will cause him increased anxiety.

In Issues one and two, Student contends that San Francisco did not meet its child find obligation to him and failed to assess him in all areas of disability. These issues are sufficiently pled to put San Francisco on notice as to the basis of Student's claims because Student presented sufficient facts in support of them.

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[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).

In Issue three, Student contends that San Francisco failed to provide adequate prior written notice before denying him special education eligibility. In Issue four, Student contends that San Francisco failed to conduct a proper individualized educational plan meeting for him and failed to take into consideration the recommendations of his independent evaluator. In Issue seven, Student contends that San Francisco violated his parent's rights by failing to advise her of her right to request an independent educational evaluation. However, Student has presented no facts in support of these three allegations either in his summary of complaint or summary of facts, and does not identify in the issues which IEP is in question. For these reasons, Issues three, four, and seven are insufficient as pled.

In Issue five, Student raises five sub-issues. In Issue five (a), he reiterates the allegations of Issue three that San Francisco failed to provide appropriate prior written notice to his parent regarding its decision to deny him special education eligibility. For the same reasons as stated above regarding Issue three, Student's Issue five (a) is insufficient as pled. In Issue five (b), Student alleges that San Francisco failed to provide notice of procedural safeguards to his parent. In Issue five (d), Student alleges that San Francisco failed to timely complete and offer him placement following its January assessment. However, Student provides no facts in support of Issues five (b) and (d); they are therefore insufficient as pled.

In Issue five (c), Student alleges that San Francisco did not adequately assess him in 2014; it basically reiterates what Student alleges in Issue two. Issue six is basically part of Issue 5, in that it alleges that the assessment plan offered by San Francisco was inadequate because it failed to provide assessment in many areas in which Student is deficient. Like Issue two, Issue five (c) and Issue six issues are supported by the recitations in Student's summary of complaint and summary of facts, and are therefore sufficiently pled.

Is Issue eight, Student alleges that San Francisco failed to develop an appropriate IEP for him that addressed all of Student's unique needs. This issue is sufficiently pled as Student states in his summary of complaint and summary of facts that San Francisco failed to find him eligible for special education and provided him with a 504 plan instead of developing an IEP for him.

Issue nine is deficient for two reasons. First, it names a different child. It is therefore unclear whether the issue actually pertains to Student. Second, Issue nine alleges that San Francisco engaged in unlawful discrimination in violation of Student's rights under title 29 United States Code section 794(a), and title 42 United States Code section 1983. Student does not discuss any facts regarding this issue in his summary of complaint and summary of facts that would put San Francisco on notice as to what actions they did that could be construed as discrimination under either of the federal statutes named in Issue nine.

In Issue 10, Student alleges that San Francisco failed to implement his 504 plan in violation of title 29 United States Code section 794(a) and 34 Code of Federal Regulations parts 104.32 and 104.33. Student fails state what his 504 plan contained, and what specific

portions San Francisco failed to implement. For these reasons, Issue 10 is insufficient as pled.

In Issue 11, Student contends that San Francisco failed to provide him with an appropriate school assignment for the 2014-2015 school year to accommodate his needs. However, other than stating that San Francisco failed to assign him to his neighborhood school, Student fails to give any support for this allegation. For example, Student fails to state why the school to which he was assigned is not appropriate and why his needs could not be met there. For these reasons, Student's Issue 11 is insufficient as pled.

ORDER

1. Issues one, two, five (c), six, and eight of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issues three, four, five (a), (b), and (d), seven, nine, 10, and 11 of 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), as to Issues three, four, five (a), (b), and (d), seven, and 11.[8]

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

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues one, two, five (c), six, and eight of Student's complaint.[9]

DATE: September 24, 2014

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

[9] Student's Issues nine and 10 allege violations of Student's rights under section 504 of the Rehabilitation Act, and title 42 United States Code section 1983, which are outside the jurisdiction of the Office of Administrative Hearings in due process proceedings.