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 2020050714

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

JUNE 1, 2020

On May 21, 2020, 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, and two other parties who were dismissed by Student. On May 28, 2020, San Francisco Unified School District filed a Notice of Insufficiency as to the complaint.

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).

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

A free appropriate public education is called a FAPE. An individualized education program is called an IEP. Student's complaint alleges three issues, each insufficiently pled.

Student' Issue One contends the March 17, 2020 IEP "appears to be acceptable on paper but offers no guarantee in practice." On its face, Issue One is based upon speculation only. Student has not provided any information regarding which parts of the IEP he disagrees with, such as placement, specific goals or services offered. Nor has Student provided any information to support his claim that this acceptable IEP on paper, cannot be appropriately implemented. Although Student makes allegations regarding the handling of the IEP team meeting, he provides no information to identify how the school district's alleged deficiencies relate to a denial of FAPE.

Student's Issues Two and Three contend that San Francisco Unified School District's past settlement agreement to fund a private placement, set a precedent and prevents the school district from discontinuing the funding of Student's private placement. Although the law is clear that OAH does not have jurisdiction to determine the breach of a settlement agreement, a Notice of Insufficiency is not a substitute for a Motion to Dismiss for Lack of Jurisdiction. Nevertheless, a failure to implement the term of a settlement agreement may be subject to due process hearing if the alleged breach resulted in a denial of FAPE. Student's complaint alleges no facts to support a denial of FAPE and is devoid of any factual support for such a contention. For the above reasons, Student's complaint fails to provide San Francisco Unified School District with the required problem description and facts relating to the alleged problems.

A parent without 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. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. 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.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

DocuSigned by:
Judith Pasewark
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Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings