

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. 2013100890

ORDER PARTIALLY GRANTING
NOTICE OF INSUFFICIENCY

On October 23, 2013 Parents on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming San Francisco Unified School District (District). On November 4, 2013, District 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

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 consists of 22 pages of factual allegations, including that Student is eligible for special education under the category of other health impaired because of a diagnosis of attention deficit hyperactivity disorder; that Student’s academic progress has declined during the statutory period of this matter; that the District did not implement portions of Student’s individualized education programs (IEP) by providing weekly and quarterly progress reports to Student’s parents (Parents); that Parents attended IEP meetings and voiced concerns about Student’s placement and lack of progress; and that Parents believed that Student required a more individualized and intensive academic program designed to address his learning disabilities, and District refused to change his placement to one that Parents requested. Parents notified District in August 2013 that they intended to privately place Student at Sterne School for the 2013-2014 school year as result of their belief that District failed to implement Student’s IEP and the inappropriateness of the District’s offered program. As part of their resolutions, Parents seek reimbursement for private placement.

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).

The factual allegations of the complaint identify the following issues arising under the Individuals with Disabilities Education Act (IDEA).

Issue 1 alleges that District denied Student a free appropriate public education (FAPE) by failing to implement Student's October 19, 2012 IEP, including by providing periodic progress reports to Parents, and by implementing accommodations and supports. District's NOI did not challenge this issue. When the complaint is read in its entirety, this issue is supported by sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and hearing.

Issue 2 alleges that District deprived Parents the opportunity to meaningfully participate in the development of Student's educational program by failing to provide progress reports to Parents as called for in Student's October 19, 2012 IEP. District's NOI did not challenge this issue. When the complaint is read in its entirety, this issue is supported by sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and hearing.

Issue 3 alleges that District denied Student a FAPE by failing to provide Parents with prior written notice explaining District's refusal to change Student's current placement to the school requested by Parents in September 2013. District's NOI did not challenge this issue. When the complaint is read in its entirety, this issue is supported by sufficient facts to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and hearing.

Issues 4 and 5, which the complaint identifies as "Issue B," alleges that District denied Student a FAPE by failing to offer Student an appropriate program and placement, and related services for the 2013-2014 school year. Each issue will be addressed separately.

Issue 4 relating to Student's program and placement is sufficiently pleaded when the complaint is read in its entirety. Student alleges that the academic program at District's proposed placement was not appropriate for Student, and for that reason Parents elected to place him at Sterne School, where they contend the program was more appropriate for Student. The facts are sufficient to put District on notice of the issue and to prepare for and participate in a resolution session, mediation and hearing.

However, District argues that the complaint does not state facts to support Issue 5 by identifying those related services Student contends District should have offered, or why he needed those services. District's argument is persuasive. The complaint focuses on the Parents' request for placement at Stern School and District's September 2013 offer of a special day class, with which Parents disagreed. Parent's proposed remedies include prospective placement at Sterne School, reimbursement for a private assessment, and reimbursement for private placement and for transportation costs incurred by Parents. With the exception of transportation costs, neither the facts alleged throughout the complaint, nor the proposed remedies, address any related services that District failed to offer. Accordingly,

Issue 5 is not sufficiently pleaded to describe the problem or put District on notice of the issue. Student will be granted leave to amend as to Issue 5.

ORDER

1. Issues 1, 2, 3 and 4 of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 5 of Student's complaint is insufficiently pled under section Title 20 United States Code 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).⁸ 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.

4. If Student does not timely file an amended complaint the hearing shall proceed only on Issues 1, 2, 3 and 4 of the complaint, as described in this Order.

5. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: November 6, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

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