

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. 2013120004

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 26, 2013, Parent on Student's behalf (Student) filed a Due Process Hearing Request¹ (complaint) naming San Francisco Unified School District (District). On December 11, 2013, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the NOI is denied.

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 alleges that he is an eleven year old boy who lives within District’s boundaries, and attends Aptos Middle School. He has been eligible for special education under the eligibility category Multiple Disability, and secondarily under Orthopedic Impairment since February 2, 2005. The complaint alleges several paragraphs of facts, some of which are chronologically disjointed, but when read together they summarize Student’s educational history in the District and concerns expressed by Parents at his individualized education program (IEP) team meetings. Student generally alleges that District does not have properly trained staff to teach him or to handle his learning disabilities; Student is suffering in academic and social areas; and District has failed to provide behavior interventions and to create and implement strategies to address his unique needs.

The issues articulated in the complaint have been renumbered and restated below for clarity and organization.

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).

Issue 1 alleges that District denied Student a free appropriate public education (FAPE) from February 2, 2005, to the time he filed his complaint in this matter by a) failing to timely assess Student in all areas of need when it learned that Student was regressing; b) failing to inform Parents of Student's needs and abilities when it learned of Student's regression; and c) failing to implement proper interventions when it learned of Student's regression. Student contends that Student demonstrated regression at school and that District failed to assess him and to set goals to meet his needs in light of the regression. Although District objects to the claims in Issue 1 to the extent they fall outside of the applicable two-year statute of limitations, an NOI is not the proper pleading to challenge whether this claim is time-barred. Factual findings supported by appropriate evidence are necessary to make such findings. When read in the context of the facts alleged in the complaint, the issue is sufficiently pleaded to put District on notice of the claim and to prepare for and participate in a resolution session, mediation and hearing.

Issue 2 alleges that, from February 2, 2005, through the time of filing the complaint District failed to assess Student in all areas of suspected disability, including neuropsychology, functional behavior, social behavior, assistive technology, augmentative/alternative communication, and hearing/auditory. This claim is supported by facts describing Student's needs and abilities. Although District objects to the claims in Issue 2 to the extent they fall outside of the applicable two-year statute of limitations, an NOI is not the proper pleading to challenge whether this claim is time-barred. Factual findings supported by appropriate evidence are necessary to make such findings. When read in the context of the facts alleged in the complaint, the issue is sufficiently pleaded to put District on notice of the claim and to prepare for and participate in a resolution session, mediation and hearing.

Issue 3 alleges that, from February 2, 2005, through the time of filing the complaint, District failed to offer Student a one-to-one aide and failed to train aides to address Student's unique needs. This claim is supported by facts describing Student's needs and abilities. Although District objects to the claims in Issue 3 to the extent they fall outside of the applicable two-year statute of limitations, an NOI is not the proper pleading to challenge whether this claim is time-barred. Factual findings supported by appropriate evidence are necessary to make such findings. When read in the context of the facts alleged in the complaint, the issue is sufficiently pleaded to put District on notice of the claim and to prepare for and participate in a resolution session, mediation and hearing.

Issue 4 alleges that from May 2013 through the time of filing of the complaint District denied Student a FAPE by failing to draft appropriate and measurable IEP goals and objectives. This claim is supported by facts describing Student's needs and abilities. When read in the context of the facts alleged in the complaint, the issue is sufficiently pleaded to put District on notice of the claim and to prepare and participate in a resolution session, mediation and hearing.

Issue 5 alleges that District denied Student a FAPE from February 2, 2005, through the time of filing the complaint, by failing to offer an appropriate placement, and by failing

to inform Parents of the continuum of options, including a non-public school. This claim is supported by facts describing Student's needs and abilities. Although District objects to the claims in Issue 5 to the extent they fall outside of the applicable two-year statute of limitations, an NOI is not the proper pleading to challenge whether this claim is time-barred. Factual findings supported by appropriate evidence are necessary to make such findings. When read in the context of the facts alleged in the complaint, the issue is sufficiently pleaded to put District on notice of the claim and participate in a resolution session, mediation and hearing

Issue 6 alleges that District denied Student a FAPE during the 2010-2012 school years by failing to assess Student in the areas of occupational therapy and hearing. Student contends that in his 2010 psychotherapy assessment the assessor noted that he should be assessed in occupational therapy. Student also alleges that he presented with indications of hearing impairment but was never assessed for hearing. The second part of this issue, regarding hearing, is included as part of Issue 2, and therefore this issue will be limited to the claim relating to occupational therapy and the time frame 2010-2012. Issue 6 as limited in this Order pleads sufficient facts to put District on notice of the claims to prepare for and participate in a resolution session, mediation and hearing.

Issue 7 alleges that District denied Student a FAPE from November 25, 2013, through the time of filing by failing to offer a) appropriate assistive technology services and b) appropriate speech and language services. Regarding assistive technology, Student alleges that at Student's November 25, 2013 IEP, an assistive technology report was considered by the IEP team; the assessor was not present; the report recommended that Student use an iPad; strategies should have been developed for use of the iPad; and District failed to give Student a plan for implementing assistive technology because he was not observed in class using the iPad provided in his May 2013 IEP. Regarding speech, Student alleges that at his October 2013 IEP Parents addressed the need for further speech and language services beyond the 45 minutes of group speech he received; that he is non-verbal and has receptive communication deficits; that he is an English language learner and is being served by non-bilingual therapists; that he receives individual services for 15 minutes twice weekly; and he has shown no progress in communication or speech until Parents funded private speech therapy. Issue 7 pleads sufficient facts to put District on notice of the claims to prepare for and participate in a resolution session, mediation and hearing.

Student includes numerous proposed and well-defined resolutions which are sufficiently stated to the extent known and available to Student at the time.

ORDER

1. Issue 6 is limited to the area of occupational therapy during the time frame of 2010-2012. 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.

Dated: December 16, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings