

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. 2012060292

ORDER DETERMINING STUDENT'S
DUE PROCESS COMPLAINT
INSUFFICIENT AS PLED

On June 5, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming the San Francisco Unified School District (District). On June 20, 2012, the 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 named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

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).

⁴ 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.”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 does not contain an adequate description of the claims she brings against the District. Student does not list her issues separately from the facts she alleges. In reviewing the discussion of facts in the complaint, it appears that Student is contending that her present placement in a special day class for speech and language impaired children, pursuant to an individualized education program (IEP), is not appropriate. Student states that she is receiving little academic benefit from the placement. However, Student provides no factual support for this contention. She provides no discussion as to what her last IEP provides, what type of instruction she presently receives, and, importantly, what facts support her contention that she is not receiving legally sufficient academic benefit from the placement.

Student also contends in the factual discussion of her complaint that her placement is not appropriate because her inappropriate behaviors are still “out of control.” Student provides only one instance of possible misbehavior in which she describes an incident where she was in a school bathroom for 45 minutes with a boy. Student offers no description of why this incident signifies she was “out of control” and offers no other facts to support her contention that she is engaging in inappropriate behaviors at school and that the District is not adequately responding to them.

The lack of supporting facts in Student’s complaint prevents the District here from having an adequate basis of knowledge of Student’s issues. The District cannot

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).

appropriately prepare for settlement discussions or defend against the allegations at hearing without being informed of the facts underlying Student's contention that her placement is legally inadequate and that she requires placement in a non-public school in order to access her education. For these reasons, Student's complaint is insufficient as presently pled.

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).⁸

3. 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 fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Dated: June 22, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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