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. 2013120084 ORDER DENYING NOTICE OF INSUFFICIENCY AND FINDING COMPLAINT SUFFICIENT

On November 26, 2013 Student filed a due process hearing request][1] (complaint) naming San Francisco Unified School District (District). On December 11, 2013, District timely filed a notice of insufficiency (NOI) as to the complaint. For the reasons discussed below, the NOI is denied. The complaint is sufficiently pleaded.

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 Student is a 13-year old boy with autism who attends the eighth grade at Roosevelt Middle School within the District. The complaint contains eight pages of facts that describe a detailed chronological history from and after January 2012 relating to Student's unique needs, multiple individualized education program (IEP) meetings and IEPs between January 2012 and the filing of the complaint, and about Student's parent's requests of and disagreements with District relating to Student's needs. The complaint identifies two issues, with subparts.

Issue One alleges that District procedurally violated the IDEA by: a) failing provide progress reports required "through the IEP process" following a 2013 settlement agreement between District and Parents; b) failing to offer related services that were requested by Parents; c) failing to include a general education teacher and key staff at the September 2013 IEP meeting; and d) failing to provide Parents with "certain copies of the IEP as developed." Issue One, when read in the context of all the facts alleged in the complaint, is sufficiently pleaded to put District on notice of the issue and to prepare for a resolution session, mediation and hearing.

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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).

Issue Two alleges that District substantively denied Student a FAPE by failing to a) offer him an appropriate placement; and b) failing to offer related services to address all of his unique needs, including social skills. Student alleges that his parents requested at a fall 2013 IEP meeting that District offer placement at a non-public school, Anova Center for Education, a request District rejected. Student also alleges that his cognitive abilities surpassed his social skills, and that District did not develop a social skill program to allow him to make progress related to developing relationships at his present placement. Instead, Student alleges that he was socially disengaged. When read in the context of all the facts alleged in the complaint, Issue Two is sufficiently pleaded to put District on notice of the claim and to prepare for and participate in a resolution session, mediation and due process hearing.

Student seeks, as a proposed resolution, placement at Anova Center for Education, a certified non-public school. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. 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 12, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings