

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2014090303
(Primary Case)

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014090694

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 08, 2014, Student filed a [Due Process Hearing Request]¹ (complaint) naming the San Francisco Unified School District (“District”).

On September 23, 2014, District filed a Notice of Insufficiency (NOI) as to Student’s complaint.

On September 24, 2014, Administrative Law Judge (ALJ) Darrell Lepkowsky issued an Order entitled “Order Determining Complaint Sufficient In Part and Deficient In Part”. In the Order, ALJ Lepkowsky found Issues 1, 2, 5(c), 6, and 8 of Student’s complaint were sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii). ALJ Lepkowsky also found Issues 3, 4, 5(a), 5(b), 5(d), 7, 9, 10, and 11 to have been insufficiently pled under Title 20 United States Code section 1415(c)(2)(D), and permitted Student the opportunity to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II) as to Issues 3, 4, 5(a), 5(b), 5(d), 7, 9, 10, and 11.

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).

On September 28, 2014, Student filed a timely First Amended complaint naming the District.

On October 8, 2014, District timely filed a Notice of Insufficiency (NOI) as to Student's First Amended 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

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

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.

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.].

Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student once again alleges 11 claims in the First Amended complaint. Student's First Amended complaint also bolsters the factual allegations upon which the claims are based. In turn, District continues to challenge the sufficiency of Student's claims numbered 3, 4, 5(a), 5(b), 5(c), and 5(d), 7, 9, 10, and 11. For the reasons described below, Student is found to have sufficiently pled claims numbered 3, 4, 5(a), 5(b), 5(c), and 5(d), 7, 9, 10, and 11.⁸

In the First Amended complaint, Student alleges more specifics about the basis for the issues challenged by District. Significantly, he alleges that his mother's limited English ability necessitated communications with her be in Spanish, not English, and that this failure deprived the mother of necessary notice, participation, information, or ability to provide informed consent. He also alleges that District failed to adequately assess Student, implement the agreed-upon 504 plan, and that District's placement of Student at Visitation Valley Middle School was a denial of FAPE.

In Issue 3, Student contends that District failed to provide adequate prior written notice before denying him special education eligibility. In Issue 4, Student contends that District failed to conduct a proper individualized educational plan meeting for him and failed to take into consideration the recommendations of his independent evaluator. In Issue 7, Student contends that District violated his parent's rights by failing to advise her of her right to request an independent educational evaluation. Student has now presented facts in support of these three allegations, namely that the mother's limited English ability rendered District's communications inadequate. For these reasons, Issues three, four, and seven are sufficient as pled.

In Issue 5, Student raises four sub-issues. In Issue 5(a), he reiterates the allegations of Issue 3 that District failed to provide appropriate prior written notice to his parent regarding its decision to deny him special education eligibility. For the same reasons as stated above regarding Issue 3, Student's Issue five(a) is sufficient as pled. In Issue 5(b), Student alleges that District failed to provide notice of procedural safeguards to his parent. For the same reasons as stated above regarding Issue 3, Student's Issue 5(b) is sufficient as pled. Issue 5(c) has previously been ruled sufficiently pled by ALJ Lepkowsky, and its adequacy is not reconsidered here. In Issue 5(d), Student alleges that District failed to timely complete the IEP process and offer him placement following its March 2013 assessment. Student

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).

⁸ District raises allegations that Student's claims 9, 10, and 11 are outside of OAH's jurisdiction. Such allegations are the subject of a Motion to Dismiss, not a Notice of Insufficiency, and are not addressed by this Order.

adequately alleges facts regarding the post-assessment timeline, including several meetings and a delay in implementation of services, that support his contentions. As such, Issue 5(d) is found to be sufficient as pled.

In Issue 9, Student now identifies the correct child and alleges facts showing a pattern of District's conduct in support of his allegation that District engaged in unlawful discrimination in violation of Student's rights under Title 29 United States Code Section 794(a), and Title 42 United States Code Section 1983. Although based upon the barest of allegations, given the liberal pleading standard in effect here, Student has pled enough to find that Issue 9 is sufficient as pled.

In Issue 10, Student alleges that District failed to implement his 504 plan in violation of title 29 United States Code section 794(a) and 34 Code of Federal Regulations parts 104.32 and 104.33. Student now states what his 504 plan contained, and what specific portions District failed to implement. For these reasons, Issue 10 is sufficient as pled.

In Issue 11, Student contends that District failed to provide him with an appropriate school assignment for the 2014-2015 school year to accommodate his needs. Student now asserts facts to support his contention that the school to which he was assigned is not appropriate because it was underperforming and not able to handle Student, and thus why his needs could not be met there. For these reasons, Student's Issue 11 is sufficient as pled.

Finally, Student has alleged proposed resolutions, including placing Student at Everett Middle School, implementation of Student's 504 plan, a District funded IEE, a Post-IEE IEP meeting, reimbursement for parent's expenses since January 2014, compensatory education for services not provided since January 2014, and payment of attorneys' fees and costs. Such proposed resolutions meet the requirements under Title 20 United States Code section 1415(b)(7)(A)(ii). Thus, Student's First Amended Complaint is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All presently set mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: October 20, 2014

/s/

TED MANN
Administrative Law Judge
Office of Administrative Hearings

