BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT AND PLEASANTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023120077

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY SUFFICIENT

MAY 14, 2024

On December 4, 2023, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Sacramento City Unified School District, called Sacramento City.

On April 24, 2024, OAH deemed filed Student's first amended complaint. Student's first amended complaint named Pleasanton Unified School District, called Pleasanton, as an additional respondent. On May 9, 2024, Sacramento City filed a notice of insufficiency as to the complaint, challenging the issues Student raised against Sacramento City only. Pleasanton did not file a notice of insufficiency.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (20 U.S.C. § 1415(b) & (c).) 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: (1) describes the problem relating to the proposed change regarding the student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (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." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. Opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. Opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. Of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. Opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to*

States for the Educ. Of Children with Disabilities & Preschool Grants for Children with Disabilities (Aug. 14, 2006) 71 FR 46540-46541, 46699.)

DISCUSSION

Student's first amended complaint alleges twelve issues against Sacramento City, some of which are sufficient and some which are insufficient. The complaint includes multiple sections which allege facts related to Student's issues. While Student's complaint is not a model of clarity, when read as a whole, most Student's issues are understandable and sufficiently pled to put Sacramento City on notice as to the basis of Student's claims. Sacramento City's arguments in the notice of insufficiency demonstrate that it understands the majority of Student's issues sufficiently to defend against them. Each of Student's issues is discussed below.

Issue 1a is sufficiently pled. Student alleges that Sacramento City should have filed for due process to override Parent's lack of consent to the April 2022 IEP. This issue is sufficiently pled.

Issue 1b is not sufficiently pled. Student does not clearly allege when Sacramento City should have issued Parent prior written notice. Student's alleged facts are confusing as to the dates of IEPs and when Student alleges services were provided. It is not clear whether these are typographical errors, but the number of seemingly incorrect or inconsistent dates makes this issue impermissibly confusing.

Issue 2 is sufficiently pled. Issue 2 challenges the offer of services in the April 2022 and December 2022 IEPs, in that Sacramento City did not offer services in the areas of behavior, social skills, verbal communication, and non-verbal communication. Student also challenges the group modality of the speech services offered in the April

2022 and December 2022 IEPs. Lastly, Student challenges the location of the services which Student could not access free of charge. This issue is sufficiently pled.

Issues 3 and 4 are sufficiently pled and both challenge Student's initial special education assessments and resulting April 2022 assessment report. Issue 3 alleges Sacramento City's failure to conduct legally compliant testing related to autism and Issue 4 challenges the legal compliance of the resulting assessment report. These issues are sufficiently pled.

Issue 5 is sufficiently pled. Issue 5 alleges that Sacramento City's offer of speech and occupational therapy services in the April 2022 IEP as well as the physical therapy services in the December 2022 IEP were not clearly defined. Issue 5 also alleges that Sacramento City failed to make a formal offer of public preschool placement. This issue is sufficiently pled.

Issue 6 is sufficiently pled. Student alleges that Sacramento City predetermined that it would not offer Student a general education preschool placement in the December 2022 IEP because Sacramento City allegedly does not offer general education preschool programs to special education students free of charge. This issue is sufficiently pled.

Issues 7 and 8 are sufficiently pled. These issues allege that Sacramento City did not assess Student in the areas of behavior, assistive technology, and for eligibility under the category of other health impairment. While Issues 7 and 8 both allege a failure to assess student for eligibility under other health impairment, this overlap does not render the issues insufficiently pled as described in this Order. Any concerns regarding duplicative issues can be resolved later, such as at the prehearing conference. These issues are sufficiently pled.

Issue 9 is sufficiently pled. Student alleges that Sacramento City did not timely provide Parent with an assessment plan following her referral of Student in December 2021 and failed to meet is Child Find obligations and identify Student a possibly requiring special education services due to his receipt of services from the Alto Regional Center. As with previous issues, Student' complaint appears to include some typographical errors regarding dates, but taken as a whole, this issue is sufficiently pled.

Issue 10 is sufficiently pled. Student alleges that he requested an independent educational evaluation in May 2022, which Sacramento City did not respond to until October 2022. Student asserts that Sacramento City did not respond to Student's request without unnecessary delay. This issue is sufficiently pled.

Issue 11 is sufficiently pled. Student specifically alleges that Sacramento City failed to enroll Student or provide transportation services consistent with the requirements of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, *et seq.*). This issue is sufficiently pled.

Issue 12 is sufficiently pled. Student alleges that the IEPs Sacramento City offered him during the 2021-2022 and 2022-2023 school years did not include legally compliant early childhood special education services. While broad, this issue is sufficiently pled.

Sacramento City also challenges Student's proposed resolutions. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's complaint is not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues 1a, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Student's first amended complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue 1b of Student's first amended complaint is insufficiently pled under title 20 United States Code section 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).
4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1a, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in Student's first amended complaint.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings