BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2022110464

ORDER FINDING AMENDED DUE PROCESS COMPLAINT SUFFICIENT

JANUARY 9, 2023

On November 16, 2022, Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming East Side Union High School District. On December 1, 2022, OAH determined Student's complaint was partially insufficient. On December 20, 2022, Student filed an amended complaint. On January 4, 2023, East Side timely filed a notice of insufficiency as to Student's amended complaint.

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, called a FAPE; (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, and 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 46,540-46541, 46699.)

Here, Student alleges 20 problems, or issues. The facts underlying Student's issues are written in a casual narrative style, but each claim is precisely stated at the beginning of the issue.

At Issue 1, Student alleges he was denied a FAPE by delays in conducting individualized education program, or IEP, team meetings. The narrative contains details

of East Side's alleged negligence or discourtesy in canceling and rescheduling meetings, and consequences to Student's educational program. The facts give enough information to provide East Side with an awareness and understanding of Issue 1.

At Issue 2, Student alleges that East Side conducted an IEP team meeting on May 25, 2022, but did not consider Parent's concerns for Student's education and held the meeting without Parent, resulting in an educational program that did not offer Student a FAPE. These facts give enough information to provide East Side with an awareness and understanding of Issue 2.

At Issue 3, Student alleges East Side denied Student a FAPE because it did not hold an IEP team meeting within 30 days of Parent's request on September 15, 2022. The recitation of facts surrounding the delay give enough information to provide East Side with an awareness and understanding of Issue 3.

At Issue 4, Student alleges he was denied a FAPE from May 2022 through December 20, 2022, because East Side delayed in giving Parent the notes section of proposed IEPs dated May 25, 2022, August 23, 2022, October 21, 2022, and November 10, 2022. The recitation of facts surrounding the delay in Parent's receipt of complete IEPs, and her concerns that her memory was no longer fresh when the documents were received, give enough information to provide East Side with an awareness and understanding of Issue 4.

At Issue 5, Student alleges he was denied a FAPE because the notes sections of identified IEPs were incorrect, depriving Parent of information crucial to Parent's understanding of the IEP team meeting and the IEP document. The recitation of facts surrounding the alleged inaccuracies in documenting a portion of the IEP give enough information to provide East Side with an awareness and understanding of Issue 5.

At Issue 6, Student alleges he was denied a FAPE from May 2022 through December 20, 2022, because his concerns were not considered at identified IEP team meetings. Student alleges that East Side's IEP team members talked and laughed among themselves and did not listen to what Student had to say, that team members disruptively left the meetings, and that the meetings were regularly interrupted. These facts about the IEP team members' conduct give enough information to provide East Side with an awareness and understanding of Issue 6.

At Issue 7, Student alleges he was denied a FAPE because the November 10, 2022 IEP contained an unclear offer of extended time as an accommodation, and Parent's questions regarding that accommodation were not sufficiently answered at the IEP team meeting. The recitation of facts surrounding Parent's confusion and attempts to obtain clarification give enough information to provide East Side with an awareness and understanding of Issue 7.

At Issue 8, Student alleges East Side denied him a FAPE by failing to provide Parent with prior written notice when denying Parent's requests, specifically in response to Parent's oral request for increased push-in support for math at the October 21, 2022 IEP team meeting, and to Parent's written requests regarding the May 25, 2022, October 28, 2022, and November 10, 2022 IEPs. Issue 8 also alleges that a prior written notice on October 31, 2022, in response to Parent's requests was unclear, and that Student's educational program has been adversely impacted by the lack of response to Parent's requests. The facts related to Parent's requests give enough information to provide East Side with an awareness and understanding of Issue 8.

At Issue 9, Student alleges he was denied a FAPE because the IEP team meetings were conducted too quickly, in disregard of his processing disability. Student also alleges that East Side team members made the meetings noisy, adversarial, and did not

give Parent or Student time to speak. The facts surrounding the alleged inability of Parent and Student to participate in IEP team meetings give enough information to provide East Side with an awareness and understanding of Issue 9.

Student failed to number the problem after Issue 9, which will be renumbered Issue 9.1. At Issue 9.1, Student alleges he was denied a FAPE because he was placed in a study skills class without parental consent in August 2022, which resulted in Student missing specialized academic instruction and having to make up assignments in each of his classes without the support stated in his IEPs. Student also alleges that any support he was to receive in the study skills class was not provided. The recitation of facts surrounding the change in special education and related services gives enough information to provide East Side with an awareness and understanding of Issue 9.1.

At Issue 10, Student alleges he was denied a FAPE because Parent was denied communication with Student's teachers. Student does not allege particular dates, but does identify the particular teachers and service providers as well as East Side's communications to Parent about access, which should be sufficient to provide East Side with an awareness and understanding of Issue 10.

At Issue 11, Student alleges East Side denied him a FAPE by having him wear headphones during text to speech assignments instead of AirPods, which caused Student to miss some instruction, caused unnecessary attention to Student's disability, and increased Student's attention difficulties. No time period is alleged at Issue 11, or at Issues 10 through 18, but as the statute of limitations is two years, and Student has not alleged an exception to the statute of limitations, the period of time is assumed to be no greater than November 16, 2020 through December 20, 2022. The facts surrounding Student's headphones give enough information to provide East Side with an awareness and understanding of Issue 11.

At Issue 12, Student alleges that his IEPs failed to reflect that he is entitled to the specific accommodation of retaking tests, quizzes or assignments for better grades. Student's allegation is readily checked against the accommodations listed in his IEPs. The facts surrounding the alleged error in Student's IEPs include sufficient information to give East Side an awareness and understanding of Issue 12.

At Issue 13, Student alleges he was denied a FAPE because his accommodation of 100 percent extra time for tests and assignments was not written into his IEPs. The facts surrounding this alleged error in Student's IEPs include sufficient information to give East Side an awareness and understanding of Issue 13.

At Issue 14, Student alleges East Side denied him a FAPE by conducting disorganized IEP team meetings, delaying continuation meetings, and sending IEP notes, which interfered with Parent's participation. The facts surrounding this alleged error in Student's IEPs include sufficient information to give East Side an awareness and understanding of Issue 14.

At Issue 15, Student alleges East Side denied him a FAPE by disregarding Parent's requests on how to send important school notices and documents home to her, resulting in Parent receiving information late or not at all. The facts surrounding East Side's alleged failure to get important information to Parent are sufficient to give East Side an awareness and understanding of Issue 15.

At Issue 16, Student alleges East Side denied him a FAPE by changing Student's schedule, eliminating accommodations from Student's IEPs, delaying IEP team meetings, and conducting disorganized IEP team meetings, all in retaliation for Parent's complaints to the State of California and at school board meetings. Although OAH does not have jurisdiction to hear retaliation claims, it does have jurisdiction to decide if East Side's

actions, whether in retaliation or not, interfered with Student's educational program and denied Student a FAPE. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a); see *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Student's alleged facts regarding East Side's failures to provide Student with an appropriate education are sufficient to give East Side an awareness and understanding of Issue 16.

At Issue 17, Student alleges he was denied a FAPE because East Side did not timely give Parent a complete copy of Student's school records on request. The facts surrounding East Side's alleged failure to respond to Parent's records request are sufficient to give East Side an awareness and understanding of Issue 17.

Student alleges two problems numbered 17. The second problem 17 will be renumbered Issue 17.1. At Issue 17.1, Student alleges that he was denied a FAPE by multiple errors in an alleged IEP amendment to a January 20, 2022 IEP, with several express examples given. The facts surrounding East Side's alleged multiple errors in the amendment to the January 20, 2022 IEP, are sufficient to give East Side an awareness and understanding of Issue 17.1.

At Issue 18, Student alleges that he was denied a FAPE from May 25, 2022, because East Side failed to offer Student a specialized reading program for students with dyslexia, although Student is dyslexic. The facts alleged are sufficient to give East Side an awareness and understanding of Issue 18.

A complaint is also 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).) Student's proposed resolutions are sometimes specific, and sometimes simply a request that OAH hold East Side accountable. OAH has broad equitable authority to award

remedies for a denial of FAPE. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) School districts may be ordered to provide compensatory education or additional services to students who have been denied a FAPE, or an appropriate remedy may be crafted by the ALJ. (*Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) The IDEA does not require compensatory education services to be awarded directly to a student, so staff training may be awarded as appropriate. (*Park v. Anaheim Union High School District* (9th Cir. 2006), 464 F.3d 1025, 1031-1034.) Student's requests for specific and equitable relief have met the statutorily required standard regarding proposed resolutions.

ORDER

1. The amended 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.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings