BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT AND SUNOL GLEN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024060790

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY SUFFICIENT

JULY 19, 2024

On June 24, 2024, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Pleasanton Unified School District and Sunol Glen Unified School District. On July 9, 2024, Sunol Glen filed a Notice of Insufficiency regarding only Issues 1, 2(B), 3(B)(i) and (ii), and 9 of the complaint. On July 10, 2024, Student opposed Sunol Glen's notice of insufficiency regarding Issues 1 and 2(B). On July 11, 2024, Sunol Glen filed a reply.

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 deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Student argues the complaint was served on June 22, 2024, and that Sunol Glen's notice of insufficiency was untimely filed 17 days after receiving the complaint. Student transmitted the complaint to OAH on Saturday June 22, 2024, at 1:30 AM. The proof of service asserts Student transmitted the complaint to the Superintendent of Sunol Glen, by email, on Saturday June 22, 2024. The complaint is deemed filed and served on Monday June 24, 2024, and Sunol Glen timely filed the notice of insufficiency.

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 Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Board* (M.D.Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Board 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.)

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (*l*); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (*l*), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action. That is, the claim accrues

when the parent knows that the education provided is inadequate, and not when the parent understands a claim occurred. (*M.M. & E.M. v. Lafayette School Dist*. (N.D.Cal., Feb. 7, 2012 Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, ** 17 – 19, affd. in part and revd. in part on other grounds by *M.M. v. Lafayette School Dist*., et al (9th Cir. 2014) 767 F.3d 842, 859.)

It does not matter if the parent understood that the inadequacy was a legal claim, what is material is the fact that the parent had knowledge of the problem. Congress intended to obtain timely and appropriate education for special-needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Student v. Brea Olinda Unified School Dist*. OAH Case No. 2009050815, quoting *Alexopulous v. San Francisco Unified School Dist*. (9th Cir. 1987) 817 F.2d 551, 555.)

Student's complaint was filed on June 24, 2024. Claims arising before June 24, 2022, are barred unless an exception to the statute of limitations applies.

Student alleges numerous claims against both Pleasanton and Sunol Glen in her complaint. However, Sunol Glen only challenges the sufficiency of Student's Issues 1, 2(B), 3(B)(i) and (ii), and 9 as they pertain to Sunol Glen.

Student's Issue 1 alleges Sunol Glen denied Student a free appropriate public education, called FAPE, by failing to produce Student's education records within five days of Student's attorney's request for them on May 19, 2024. The complaint lists some specific items Student believes exist and were created during the time Student attended Sunol Glen but were not included in the education records Pleasanton provided in response to Student's request to Pleasanton for her education records. Student alleges other document types or categories might also exist from her time at

Sunol Glen that she did not receive in response to her attorney's requests to the two school districts.

The facts alleged in Student's Issue 1 are sufficient. Student's complaint in Issue 1 identifies the issue and adequate facts about the problem to permit Sunol Glen to respond and participate in a resolution session and mediation, and prepare for hearing. This is evident in Sunol Glen's thorough statement in the notice of insufficiency that it has none of Student's education records because it transmitted them all to Pleasanton when Student transferred back to her district of residence for the 2021-2022 school year. Sunol Glen makes factual and legal arguments in the notice of insufficiency that would constitute a complete defense to Student's claim.

A notice of insufficiency challenges whether a complaint has provided the school district with enough information to be aware of the acts or omissions a student contends caused a problem in the student's education. It does not to test the ultimate viability or merits of a student's claim. Therefore, without deciding whether Student's claim in Issue 1 is both in fact and law a viable or meritorious claim under the IDEA, it is determined that Issue 1 of the complaint is sufficiently pleaded.

Student's Issue 2(B) alleges Sunol Glen denied Student a FAPE by failing to identify, locate, and evaluate Student as a child suspected of having a disability, a duty called "child find," during the 2016-2017, 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years.

The complaint alleges extensive medical diagnoses and negative impacts they had on Student's education beginning as early as kindergarten when Student attended school with Pleasanton. Student alleges she had "disability-related concerns, which were present even before she entered [Sunol Glen] during the 2016-2017 school year."

When Parents were "fed up with the lack of engagement and support for Student and her parents" from Pleasanton, Student transferred to Sunol Glen for the 2016-2017 school year. Immediately Student's "mental health further deteriorated and began interfering with her academic work as she failed to turn in numerous assignments and began expressing ODD-esque behaviors (Oppositional Defiance Disorder) for which she saw a number of specialists." The next school year, 2017-2018, Student's "difficulties at school became more apparent both academically and socially and emotionally, demonstrating early signs of autism." Sunol Glen held a student study team meeting with Parents in September 2017 and proposed some accommodations. Student alleges "[t]hough these accommodations helped for a time, her struggles were ongoing, nonetheless." The complaint describes Student failing a test in January 2018, "test, impacting both her grades and her anxiety about school. [S]he had a panic attack the following day, preventing her from attending."

Student's complaint alleges other problems that continued in the 2018-2019 school year, summarized as, Student's "difficulties academically, socially, and emotionally" and "apparent autism, social emotional and mental health continued to negatively impact her access to education" "as she demonstrated difficulties with attention and concentration and was stressed and overwhelmed in her school setting. [Student's] intolerance for change reached a new level and her parents struggled constantly with massive tantrums. Some of these events spilled over and negatively impacted her at school." In sum these allegations indicate Parents knew or should have known Student had unidentified and unaddressed educational needs at least as of the start of the 2015-2016 school year and they were unabated through the end of the 2018-2019 school year.

To plead an exception to the statute of limitations, the complaint includes vague and conclusory allegations in a separate section entitled Statute of Limitations, including:

- Sunol Glen misrepresented to Parents and withheld from Parents information about Student's educational functioning,
- Sunol Glen misrepresented to and withheld from Parents information about Student's and Parents' rights to have Student assessed for suspected disabilities during the 2016-2017, 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years,
- Sunol Glen 's withheld educational records and information it is required to produce to Parents including in response to the records request from Student's counsel in May 2024,
- Sunol Glen misrepresented and withheld from Parents information about Student's suspected disabilities, needs, and true functioning in Sunol Glen's educational program and misrepresented it had resolved Parents' concerns during the 2016-2017, 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years, including that despite Student displaying suspected disabilities during above school years, i.e., anxiety, difficulties with peer engagement and peer groups, tantrums, etc., Sunol Glen continued to misrepresent to Parents Student was functioning like her typical peers, when she was in fact demonstrating more difficulty accessing her educational program and environment than her same-aged peers,
- Sunol Glen misrepresented Student's actual needs, disabilities, and functioning to Parents because the assessments conducted by Sunol Glen during the 2019-2020 school year were not comprehensive, and then

Sunol Glen used these assessments to admit significant weaknesses existed but misrepresented to Parents that a 504 Plan could best address Student's disabilities in an updated 504 Plan, and

- When Parents expressed their concerns to Sunol Glen about Abigail's disabilities, Sunol Glen simply brushed Parents' concerns off and gave Parents parenting advice or providing general education interventions resolved the ongoing issues through during the 2016-2017, 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years.

Additionally, Student alleges, "Parents had no knowledge of the underlying facts leading to any of the violations which serve as a basis for the violations pled throughout Student's Complaint." But in the statement of facts section of the complaint, Parents describe extensive "underlying facts" regarding Student's struggles in her education, all of which they were well aware and for which they sought non-school support, including "private practitioners and specialists" in the 2015-2016 school year and a clinical psychologist in January 2019. Additionally Student alleges "an Initial IEP meeting was held on November 15, 2019" and Parents were aware Sunol Glen and Parents considered at that time whether Student was eligible for special education and related services.

Student's complaint does not sufficiently state what misrepresentations Sunol Glen made that it had resolved the problem forming the basis of the complaint, with one exception. Student's only specific assertion is that "Sunol Glen misrepresented to Parents that a 504 Plan resolved Parents concerns." Although the complaint details how Parents were very aware of Student's continuing unsatisfactory educational performance and progress after the 504 plan was created, this one allegation is sufficient to put Sunol Glen on notice that Student seeks to invoke this exception to the

two-year statute of limitations and intends to prove Student may seek remedies for alleged denials of FAPE more than two years before the date Student filed her request for due process hearing.

The complaint does not detail what information Sunol Glen withheld from Parents that it was required to provide them.

None of Student's conclusory statements regarding supposed "misrepresentations" and "withholding of information" are supported by factual allegations that indicate Parents were prevented from filing a request for due process because of specific misrepresentations by Sunol Glen it had resolved the problem forming the basis of the complaint, or because Sunol Glen withheld information from Parents that was required to be provided to Parents before June 24, 2022. However, it is apparent from Student's complaint that Student invokes an exception to the statute of limitations and Sunol Glen has sufficient notice that Student intends to prove at hearing she is entitled remedies for alleged failure to identify, locate, and evaluate Student for eligibility for special education and related services more than two years before Student filed her complaint.

Apart from Student's assertion that Sunol Glen "misrepresented to Parents that a 504 Plan resolved Parents concerns," Student's other generic and conclusory allegations regarding the statute of limitations do not cure the lack of factual support for an exception to the statute of limitations. Accordingly, Student alleged sufficient facts to state claims regarding "child find" against Sunol Glen in Issue 2(B) pre-dating June 24, 2022, only on the basis that Parents were prevented from filing a request for due process due to specific misrepresentations by Sunol Glen that it had resolved the problem forming the basis of the complaint because Sunol Glen told Parents that "a 504 Plan resolved Parents concerns." Student has not sufficiently pleaded facts to put

Sunol Glen on notice Student intends to invoke an exception to the statute of limitations for any other supposed "misrepresentation" or "withholding of information."

Student's Issues 3(B)(i) and (ii) allege Sunol Glen denied Student a FAPE when it failed to find her eligible for special education and related services under the eligibility categories of autism and other health impairment. The thrust of Student's Issue 3 regarding Sunol Glen is duplicative of the child-find claim in Issue 2, namely that Student exhibited significant causes to suspect she was a child with a disability in need of special education and related services over many years, but Sunol Glen did not assess her for eligibility for special education and related services and determine, as finally happened in October 2023 in Pleasanton, that Student qualified for special education and related services. Student alleges, "Had [Sunol Glen] met its obligations when [Student] first exhibited symptoms of Autism in Sunol Glen during the 2016-2017 school year, conducted comprehensive assessments, found [Student] eligible under the category of Autism, and offered [Student] an educational program that addressed her actual needs over the course of the last eight years, some of the difficulties [Student] faces today would have been alleviated. Instead, Sunol Glen ignored [Student's] and her Parents cries for help, delayed assessments, failed to find her eligible for Autism, and allowed her to suffer significant disability-related concerns." Student makes the identical allegations regarding the eligibility category for other health impairment.

For all the reasons stated above regarding Issue 2(B), Student's generic and conclusory allegations regarding the statute of limitations do not cure the lack of factual support for an exception to the statute of limitations, apart from Student's assertion that Sunol Glen "misrepresented to Parents that a 504 Plan resolved Parents concerns." Accordingly, Student alleged sufficient facts to state claims regarding Sunol Glen's failure to find Student eligible for special education and related services under the

eligibility categories of autism and other health impairment in Issues 3(B)(i) and (ii) pre-dating June 24, 2022, only on the basis that Parents were prevented from filing a request for due process due to specific misrepresentations by Sunol Glen that it had resolved the problem forming the basis of the complaint because Sunol Glen told Parents that "a 504 Plan resolved Parents concerns." Student has not sufficiently pleaded facts to put Sunol Glen on notice Student intends to invoke an exception to the statute of limitations for any other supposed "misrepresentation" or "withholding of information."

Student's Issue 9 alleges Pleasanton's and Sunol Glen's acts during the relevant statutory period violated Student's and Parents' rights under section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act," Title VI of the Civil Rights Act, "and other related civil rights statutes." Student also acknowledges in a footnote, "These claims are brought to exhaust; notably, while OAH has no jurisdiction, some federal district courts have required other civil rights statutes to be exhausted." Student alleges both school districts "engaged in intentional discrimination based on disability."

A party has the right to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a)), and the jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

While OAH does not have jurisdiction to decide the claims alleged at Issue 9, Student's complaint alleges sufficient facts to put Sunol Glen on notice that Student is attempting to state these claims to exhaust administrative remedies. The determination that Student's complaint is sufficiently pleaded regarding Issue 9 is made without

prejudice to either local educational agency moving to dismiss the claims over which OAH lacks jurisdiction.

ORDER

1. Issues 1 and 9 are sufficiently pleaded under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues 2(B) and 3(B)(i) and (ii) are sufficiently pleaded under title 20 United States Code section 1415(b)(7)(A)(ii) as to claims arising on or after June 24, 2022, and as to claims arising before June 24, 2022, only as defined and limited above.
3. If Student seeks to state any claims beyond those identified as sufficiently pleaded in this Order, Student is permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. The amended complaint must comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii) and must 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 1, 2(B) and 3(B)(i) and (ii) as defined and limited above, the remaining parts of Issues 2 and 3, and Issues 4, 5, 6, 7, 8, and 9.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings