BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA SCHOOL OF THE ARTS - SAN GABRIEL VALLEY.

OAH CASE NUMBER 2023010440

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

February 1, 2023

On January 18, 2023, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming California School of the Arts – San Gabriel Valley. On January 31, 2023, California School of the Arts – San Gabriel Valley filed a Notice of Insufficiency as to the complaint.

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 Board of Education. 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.]; Cf. *M.S.-G v. Lenape Regional High School Dist. Board of Education* (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 Education of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 Fed. Reg. 46,540-46541, 46699.)

DISCUSSION

Student's complaint alleges three insufficiently pled claims. Student has failed to describe or include sufficient facts about the problems that allegedly denied Student a free appropriate public education. The allegations in the first issue are vague and confusing. It is unclear if the basis of the claim is Respondent's alleged failure to make changes to Student's educational records or the failure to inform Student of the right to a hearing under 34 Code of Federal Regulations part 99.22, that resulted in a FAPE denial. Student also fails to describe what changes to the educational records Parent requested. The allegations are also inconsistent and nonsensical. The complaint alleges Respondent failed to make some unspecified changes to Student's educational records after Parent made the request in 2022, but then alleges Student was prevented from filing a complaint within two years, and also that the conduct occurred continually "since no later than early 2020."

The second claim is insufficient because it does not include the time period or date when the alleged predetermination took place. Specifically, Student does not state when or in which specific individualized education program, or IEP, Respondent predetermined the denial of accommodations and services to address Student's "long-hauler COVID-19 effects" that began in December 2020. Student should identify the IEPs at issue.

The third issue involves an alleged failure to assess but does not clearly identify the areas Respondent allegedly failed to assess or when Respondent should have conducted the assessments. Issue 3 only mentions that Student's vision got worse during COVID-19, but also states Respondent denied Student a FAPE, by failing to assess in "these areas." Student should clearly set forth each area he claims Respondent should have assessed, and for each area not assessed, the period of time Student claims

the failure to assess occurred, including the earliest date Student asserts an assessment should have taken place.

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).) Here, Student has listed three proposed resolutions, including ordering that Respondent hold a hearing and otherwise comply with 34 Code of Federal Regulations parts 300.619 and 300.620(b) and (c), and reimbursement for neurofeedback sessions. Student has met the statutorily required standard of stating a resolution.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings