BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

SAN JUAN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022030486

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

MARCH 18, 2022

On March 14, 2022, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Juan Unified School District.

On March 16, 2022, San Juan 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 Bd. Of Education 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.]; Cf. *M.S.-G v. Lenape Regional High School Dist. Bd. 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.)

On September 28, 2017, the attorney general issued an opinion letter which considered whether the Individuals with Disabilities Education Act, the implementing regulations, and/or the California Education Code authorized a party to special education due process proceedings to be represented by a person that was not an active member of the California State Bar. The attorney general's opinion concluded that these laws did not authorize parties to a special education due process hearing to be represented by a person that is not an active member of the California State Bar in due process hearings. (100 Ops. Cal. Atty. Gen. 19 (2017).)

DISCUSSION

Although not a model of clarity, Student's complaint lists two overarching issues, a violation of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), called the IDEA, based on the failure to implement Student's individualized education program, or IEP, which denied Student a free appropriate public education, or FAPE, and a violation of section 504 of the Rehabilitation Act of 1973. The complaint fails to separately enumerate the issues for hearing, but it appears that the IDEA claims are based on San Juan's implementation of Student's IEP by distance learning, rather than in-person on the school campus. The complaint alleges that beginning in mid-March 2020, San Juan denied Student a FAPE, by failing to implement Student's October 30, 2019 IEP and later, the November 17, 2020 IEP in the following ways:

- Failing to implement Student's IEP in the on-campus school classroom and instead implementing it in the home; and
- Failing to implement Student's IEP special education and related services and supports in-person by a special education teacher or related service providers and as required by the IEP, which included the specialized

academic instruction, occupational therapy, speech language therapy, and adaptive physical education.

Student also alleges that these failures to implement Student's IEPs were material departures in the way the IEP was required to be delivered without giving proper notice to Parent or obtaining Parental consent.

The facts alleged in Student's complaint are sufficient to provide San Juan with an awareness and understanding of the issues forming the basis of the complaint. Student's complaint describes the problem and includes facts about the problem to permit San Juan to respond and participate in a resolution session and mediation.

San Juan is incorrect that the complaint is insufficient because it raises issues outside the statute of limitations and includes a vague reference to actions in mid-March 2020. The complaint was filed on March 14, 2022 and alleges that San Juan failed to implement Student's October 30, 2019 IEP "as of mid-March 2020." While any challenge to the development and creation of the October 2019 IEP itself is outside the two-year statute of limitations, Student is not challenging that IEP. Rather, Student is challenging the failure to implement that IEP as of mid-March 2020 and the subsequent November 17, 2020 IEP. Because the complaint was filed on March 14, 2022, the period at issue for the implementation claim begins no sooner than March 14, 2020. This is not inconsistent with Student's allegation that the failure to implement began "as of mid-March 2020." As such and contrary to San Juan's arguments, the complaint does ask OAH to adjudicate issues outside its jurisdiction. In other words, the complaint does not allege claims outside the statute of limitations. In addition, any further clarity required as to the exact date after March 14, 2022 Student contends the failure to implement the IEP began can be addressed at the prehearing conference.

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 complaint includes a finding that San Juan denied Student a FAPE and compensatory education in the form of services as a result of that denial. Although not well-defined, Student has met the statutorily required standard regarding proposed resolutions.

As a separate matter, Attorneys Carolyn E. Ruth and Patrick Donohue signed the complaint filed on behalf of Student and Parent. While Attorney Ruth is a California lawyer admitted to The State Bar of California in April 2021, Attorney Donohue is not an active member of the State Bar of California. Accordingly, Donohue is not authorized to practice law in California, and as such, he was not authorized to sign any documents filed with OAH, including the complaint, as a representative of or on Student's or Parent's behalf.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All prehearing conference, and hearing dates in this matter are confirmed.
3. Attorney Patrick Donohue shall not sign any documents filed with OAH as a representative of or on Student's or Parent's behalf during the pendency of

this matter unless and until he becomes an active member of the State Bar of California, at which point all filings shall include his California State Bar number.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings