BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022080028

ORDER DETERMINING DUE PROCESS COMPLAINT INSUFFICIENT

AUGUST 17, 2022

On August 1, 2022 Parents, on behalf of 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 as respondent. On August 15, 2022, Sacramento City 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 Educ. V. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1259-1260.] 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 46541, 46699.)

INIDIVIDUAL ISSUE ANALYSIS FOR SUFFICIENCY:

ISSUES 1, 2, AND 3:

Sacramento City asserts that issues one, two and three fail to clearly state facts specifying the timeframe covered by the allegations; that the time frame as stated is confusing and fails to identify a basis for extending or eliminating the statute of limitations; and that the allegations in issues one and two are duplicative. Sacramento City also asserts that, in issue number one, Student references defects regarding an IEP that cannot exist, as the date would pre-date Student's third birthday.

STATUTE OF LIMITATIONS

The IDEA allows states to establish their own statute of limitations for special education cases. (20 U.S.C. §1415(b)(6)(B) and (f)(3)(C).) In California, the statute of limitations is two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (Ed. Code, § 56505, subd. (l).) Both the IDEA and California Special Education law establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process. The statute of limitations does not apply in cases where a party is prevented from filing a complaint due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or when a party is prevented from filing due to the local educational agency's withholding of information that was required by statute to be provided to the parent. (20 U.S.C. § 1415(f)(3)(D); Ed. Code § 56505, subd. (l)(1) and (2).)

In this case, Student has alleged claims in issues one, two, and three that exceed the two-year statute of limitations without any allegation supporting the basis for such claims. District has a right to notice of the basis for Student's asserted right to pursue

claims that extend the statute of limitations beyond the two years prescribed by the California state legislature, so the district can prepare for resolution session, mediation, and hearing.

IEP PREDATING ELIGIBILITY:

Student's issue number one references an individualized educational program or IEP, dated June 22, 2019. Student also alleges her initial eligibility was determined on June 22, 2020. Student's complaint also alleges Student's date of birth as August 28, 2017. IDEA eligibility does not begin until a Student is three years old. (20 U.S.C. § 1412 (a)(1); Ed. Code § 56026, subd. (c)(2).)

Furthermore, there are no allegations that Student was eligible for special education and related services during the 2019-2020 school year, or that Student attended a district school during the 2019-2020 school year. For all of the stated reasons, the allegations in issues number one, two and three are confusing; and impede Sacramento City's ability to understand the claims against it or prepare for resolution, mediation, and hearing.

ISSUE 4:

Student alleges in issue four that Sacramento City failed to offer sufficient programs and supports in Student's initial June 22, 2020 IEP, but alleges the district was aware of Student's needs "since July 2019", and incorrectly identifies Student's gender on multiple occasions. The allegations pertaining to both occupational therapy and speech and language service inadequacies go on to say, "after school closure following the Covid-19 restrictions, the District did not correct its on-going failures." There is no allegation that Student was attending a District school during the 2019-2020 school year or that Student was eligible for special education and related services during the 2019-

2020 school year. It is not clear that the allegations in this issue refer to the Student at issue in this case, rendering the issue confusing. Furthermore, this issue appears to duplicate Issues 1, 2 and 3, above. The factual allegations supporting the claims are identical and the claims are so vague as to be unintelligible. The allegations as stated are confusing and fail to allow Sacramento City adequate notice to understand the claims against it or prepare for resolution session, mediation, or hearing.

ISSUES 5 AND 6:

Issue five asserts a denial of FAPE by filing to offer specialized academic instruction services in the June 22 2020 IEP. Issue six asserts that Student was not offered adaptive physical education or physical therapy in the June 22, 2020 IEP. The internal inconsistencies of the pleadings identified previously, continue. Both of these issues state Sacramento City did not correct "on-going failures," did not offer accommodations, and did not examine for regression "after school closure following the Covid-19 restrictions. Issue five again refers to Student as "he." Both issues allege the District did not make an "new offer of FAPE" or offer to replace prior goals which were insufficient. However, there is no allegation that Student had attended a Sacramento City school during the 2019-2020 school year or that Student was eligible for special education and related services during the 2019-2020 school year. The inconsistencies in the allegations result in the claim being confusing, and fail to allow Sacramento City adequate notice to understand the claims against it, or to prepare for resolution session, mediation, or hearing.

ISSUE 7:

Issue seven alleges Student was denied a FAPE because she was not offered extended school year services when "the June 22, 2020 IEP team was on actual notice that Student suffered a regression during the 2019-2020 school year. The district's

failure to evaluate Student's regression and to offer extended school year services for the 2019-2020 school year violates the IDEA and denied Student a FAPE." There is no allegation in the complaint that Student attended a Sacramento City school during the 2019-2020 school year or that she was eligible for special education and related services during the 2019-2020 school year. The lack of facts underlying the claims in Issue 7 renders the issue confusing and deprives Sacramento City of the information necessary to prepare for resolution session, mediation, and hearing.

ISSUE 8:

Issue eight asserts a failure by Sacramento City to offer adequate goals in the August 16, 2021 IEP. However, rather than alleging needs that were not met by the goals, the issue asserts Sacramento City ignored Parents' request to transition Student into a general education classroom and that Student required programs and services sought by the Parents. The issue includes an assertion that the goals were not sufficiently ambitious, but then ends by stating that the goals "could not be achieved without appropriate assessment in all areas of disability." It is unclear what is being alleged in this issue. This lack of clarity denies Sacramento City notice of what is actually being asserted, and the information necessary to prepare for resolution session, mediation, and hearing.

ISSUE 9:

Issue nine alleges that Sacramento City denied Student's rights by failing to address the regression Student suffered as a result of being assigned to distance learning from March 2020 to the end of the 2020-2021 school year. There are no allegations that Student was enrolled in a district school during the 2019-2020 school year, or that Student was eligible for special education and related services during the 2019-2020 school year. The allegations as stated are confusing and fail to allow

Sacramento City adequate notice to understand the claims against it or prepare for resolution session, mediation, or hearing.

ISSUE 10:

Issue ten asserts that Sacramento City failed to conduct a functional behavior assessment and create an appropriate behavior intervention plan for the 2020-2021 school year, thus denying Student a FAPE. This allegation is sufficiently clear and puts Sacramento City on notice of the claim asserted.

ISSUE 11:

Issue eleven asserts that Sacramento City failed to offer a one-to-one aide in the June 22, 2020 and in the August 16, 2021 IEPs, thus denying Student a FAPE. This allegation is sufficiently clear and puts Sacramento City on notice of the claim asserted.

ISSUE 12:

Issue twelve asserts that Sacramento City failed to offer a health plan in the June 22, 2020 IEP, thus denying Student a FAPE. However, the claim goes on to assert, "District's failure to offer Student a Health Plan for the 2019-2020 school year and the 2021-2022 school year violates the IDEA and denied Student a FAPE." Student has not alleged that she was either eligible for special education and related services during the 2019-2020 school year or that she was enrolled in a District school during the 2019-2020 school year. The allegations as stated are confusing and fail to allow Sacramento City adequate notice to understand the claims against it or prepare for resolution session, mediation, or hearing.

ISSUE 13:

Issue thirteen asserts that Sacramento City failed to find Student eligible under the category of Autism in the June 22, 2020 IEP, thus denying Student a FAPE. This allegation is sufficiently clear and puts Sacramento City on notice of the claim asserted.

ISSUE 14:

Issue fourteen asserts that Sacramento City failed to find Student eligible at the June 22, 2020 IEP team meeting, thus denying Student a FAPE. This allegation is sufficiently clear and puts Sacramento City on notice of the claim asserted.

ISSUE 15:

Issue fifteen asserts that Sacramento City denied Student a FAPE by "failing to offer Home ABA Behavior Therapy and Clinic Meetings during the 2019-2020 and 2021-2022 school years." This issue, again, alleges a failure to offer services during the 2019-2020 school year when there are no allegations that Student was either eligible for, or enrolled, in a special education program in the district during the 2019-2020 school year. The allegations as stated are confusing and fail to give Sacramento City adequate notice to understand the claims against it or prepare for resolution session, mediation, or hearing.

ISSUE 16:

Issue sixteen asserts that Sacramento City failed to offer Parent training during the 2020-2021 and 2021-2022 school years, thus denying Student a FAPE. This allegation is sufficiently clear and puts Sacramento City on notice of the claim asserted.

ISSUE 17:

Issue seventeen alleges a failure on the part of Fontana Unified School District to prepare for an IEP meeting thereby offering a pre-determined IEP. There are no allegations that Student ever attended Fontana Unified School District, nor are there any allegations asserting responsibility on the part of Sacramento City for the actions or inactions of Fontana Unified School District. The allegations go on to allege that "the district" failed to include a general education teacher in the June 22, 2020 IEP team meeting. The allegations as stated are confusing and fail to allow Sacramento City adequate notice to understand the claims against it or prepare for resolution session, mediation, or hearing.

CHALLENGES TO 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 resolutions stated in Student's complaint are not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time. Remedies awards are within the discretion of the Administrative Law Judge; and are determined based on the evidence presented at hearing.

ORDER

1. Issues 10, 11, 13, 14, and 16 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 15 and 17 of the complaint are 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 on the dates currently scheduled, but only on Issues 10, 11, 13, 14, and 16 in Student's complaint.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings