BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022090723

ORDER DETERMINING SUFFICIENCY OF DUE PROCESS COMPLAINT

OCTOBER 17, 2022

On September 22, 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 Mount Diablo Unified School District. On October 11, 2022, OAH granted Student's Motion to Amend the complaint. On October 12, 2022, Mount Diablo filed a notice of insufficiency as to the amended 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; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. Opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. 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 46,540-46541, 46699.)

DISCUSSION

The facts alleged in Student's complaint are sufficient. Student's complaint identifies the issues and adequate facts about the problem to permit Mount Diablo to respond and participate in a resolution session and mediation.

Mount Diablo claims that Student's Issues One and Three are insufficient because Student has not put the district on notice as to the applicable time frames in which these claims arose. Mount Diablo also alleges that Student has pled insufficient facts that would enable Student to extend the statute of limitations.

Student's Issue One alleges a denial of a free appropriate public education, called FAPE, based on a failure to provide timely comprehensive assessments in all areas of suspected disability. In support of Issue One, Student alleges that Mount Diablo failed to conduct an assistive technology assessment that was recommended in Dr. Rebecca Shilling's March 2021 report. Student's Issue Three alleges denials of FAPE based on procedural violations that denied parent participation in the individualized educational program process. Student's complaint alleges that she has not made sufficient progress in reading in the last two years and contends that Student has made minimal progress with the previous two years of District programming. Student's proposed resolution requests reimbursement for all educationally related expenses within the statutory period. Considering Student's entire complaint, including the proposed remedies, Student has alleged claims that arose within the two-year statute of limitations. Accordingly, the allegations in Issues One and Three are sufficiently pled for claims that arose within the statutory period.

Therefore, Student's statement of the three claims is sufficient.

ORDER

1. The 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.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings