BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

HAWTHORNE SCHOOL DISTRICT AND KIPP GENERATIONS ACADEMY.

OAH CASE NUMBER 2023070702

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

AUGUST 8, 2023

On July 21, 2023, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Hawthorne School District and Kipp Generations Academy. On August 3, 2023, Kipp Generations Academy filed a Notice of Insufficiency as to the complaint. On August 8, 2023, Student filed a response and a Notice of Errata.

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 Session (2003), p. 115; Sen. Rep. No. 108-185, 1st Session (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 FR 46,540-46541, 46699.)

DISCUSSION

Student's complaint alleges six overarching claims, none of which have been sufficiently pled. In Issues 1 through 5, Student improperly conflates the claims against both Respondents without alleging sufficient facts to support the asserted claims against each Respondent, rendering the complaint vague, confusing, and inconsistent. Issue 1 asserts Respondents failed to timely conduct a timely triennial assessment from "at least" July 2021 to October 2022. However, Student does not allege any facts to support a claim against Kipp going back to July 2021, because there are no allegations Student was attending school at Kipp prior to the beginning of the 2022-2023 school year. Specifically, the complaint alleges Student resided the Hawthorne School District, but began attending Kipp, a charter school, at the beginning of the 2022-2023 school year. There are no facts alleged in the complaint supporting the allegation that Kipp owed Student a free appropriate public education prior to the beginning of the 2022-2023 school year. Issue 1 is also insufficiently pled because there are no facts alleged supporting the claim Kipp's October 2022 assessment was untimely given the allegation Student only began attending school at Kipp in the 2022-2023 school year. Conversely, the complaint is also vague and confusing because there are insufficient facts pled to support a claim against Hawthorne School District through October 2022 after he began attending Kipp. In short, there are insufficient facts alleged supporting the claim against both Respondents for the identical period. Moreover, Student's interchangeable use of the word Respondents and District within the same issue is confusing.

Finally, it is unclear what Student means by the phrase "at least" from July 2021 in framing the period for the issue. This language is too vague as it is unclear if Student is intending to include any portion of the period prior to July 2021, particularly given the allegations pertaining to the failure to conduct a triennial assessment in May 2019. If so, the period prior to July 2021 is outside the applicable two-year statute of limitations period. Student has failed to allege any facts supporting application of an exception to the statute of limitations. (See 20 U.S.C. §1415(f)(3)(C) & (D); Ed. Code, § 56505, subd. (*l*).) The IDEA does not recognize a "continuing violation" exception to the statute of limitations. (See e.g. *J.L. v. Ambridge Area School Dist*. (W.D. Pa. 2008) 622 F. Supp. 2d 257, 268-269 [there is no continuing violation exception under the IDEA]; *White v. District of Columbia* (D.C. Cir., March 31, 2022, No. 20-cv-3821 (APM)) 2022 WL 971330, at *4-5 [student's challenge to a reevaluation time-barred because there is no ongoing obligation to assess the sufficiency of a reevaluation].) This same defect occurs in Student's Issues 2 through 5.

Student should cure the deficiencies in the pleading as discussed above. Student should also allege which local educational agency was responsible for Student, including the period and factual basis each was the responsible local educational agency at the time of the conduct at issue. To the extent Kipp was an independent charter school or its own local educational agency, Student should set forth the claim being made against each Respondent in separate issues, including the period in dispute for that Respondent, supported by factual allegations as to that Respondent. Alternatively, if Kipp was not a local educational agency, the complaint should allege the factual basis for separately naming it as a respondent in this matter. Student should also clearly state if Student intends her claim to cover the period outside the two-year statute of limitation, i.e., prior to July 21, 2021, and if so, set forth the factual allegations to support

a claim beyond the statutory period. This comment also applies to Issues 2 through 5, including the two sub-issues in Issue 3 discussed below.

Student's Issue 2 concerns Respondents' failure to provide Student with a safe learning environment from "at least" July 2021 through the date of filing of the complaint in July 2023, based on alleged bullying of Student by four male students and the failure to investigate those claims. Issue 2 is insufficient for the same reasons as discussed regarding Issue 1. Among other things, there are insufficient facts alleged to support the claim against both Respondents for the identical period. Student not only fails to set forth the dates when the alleged conduct occurred, but to the extent the conduct occurred prior to the beginning of the 2022-2023 school year, Student neglected to include facts supporting this claim against Kipp. Conversely, if the conduct occurred after Student began attending Kipp, there are insufficient facts alleged to support the claim against Hawthorne School District. Student should cure the deficiencies in the pleading as discussed above, which should include dates that the conduct occurred.

Student's Issue 3 concerns Respondents' failure to appropriately assess Student from "at least" July 2021 through the date of filing in July 2023. Issue 3 is insufficient for the same reasons as discussed regarding Issues 1 and 2. Again, there are insufficient facts alleged to support the claim against both Respondents for the identical period. Student's conflation of the claims against Respondents into a single issue, renders the issue insufficiently pled against both Respondents. There are insufficient factual allegations to support the sub-issue that each Respondent was required to conduct an educationally related intensive counseling services assessment since July 2021. According to the complaint, Student did not attend Kipp until the fall of 2022, Student's last three-year review was due in May 2019, and there are insufficient factual allegations

triggering a duty to reassess by either Respondent prior to or after the psychoeducational assessments conducted in October 2022. (See, e.g., *M.S. v. Lake Elsinore Unified School District* (9th Cir. 2017) 678 Fed. Appx. 543, 544 [school district not required to conduct a reevaluation unless it determined student's educational or related services needs warranted a reassessment, or if a parent or teacher requested a reassessment].) Student should allege the claims against each Respondent separately, including the period in dispute for that Respondent, supported by sufficient factual allegations for the period at issue.

Student's next sub-claim to Issue 3, that Respondents failed to rule out emotional disturbance eligibility, is insufficiently pled for the same reasons as discussed in Issue 1 and the first sub-issue to Issue 3. Again, Student's conflation of the claims against Respondents into a single sub-issue, renders the sub-issue insufficient against both Respondents. Student fails to identify the assessment at issue. The only assessment identified anywhere in the complaint to have occurred during the period between July 2021 and July 2023, was in October 2022, when Student was attending Kipp. Thus, there are no facts alleged supporting this claim as to Hawthorne School District. Student also uses the same vague "at least" from July 2021 language used in Issue 1 without factual allegations to support a claim outside the statutory period. As to Kipp, the allegations are insufficient because they are too vague. The allegations contain no supporting facts with dates or time periods predating the October 2022 assessment Student alleges was conducted by Kipp. In fact, the only dates of events Student included occur in April 2023, many months after the October 2022 assessment, which appears to be the only assessment at issue. Student should allege the claims against each Respondent as separate issues, identifying the assessment at issue for each Respondent, supported by sufficient factual allegations for the claim against each Respondent, covering the period prior to or during that assessment.

Student's Issue 4 concerns Respondents' failure to discuss the continuum of placement options at the individualized education programs, or IEPs since "at least" July 2021. Issue 4 is insufficient for the same reasons discussed regarding Issue 1. Again, as with Issue 1, Student's conflation of the claims against Respondents into a single issue, renders Issue 4 insufficient against both Respondents. Moreover, Student does not identify any IEPs in this claim. The only IEPs identified in other places in the complaint occurring during the period since July 2021 are a September 2022 IEP, an October 2021 IEP, and a March 2023 IEP, all of which occurred when Student was attending Kipp. Thus, there are insufficient factual allegations supporting this claim as to Hawthorne School District and it is unclear how Hawthorne School District was involved in Student's IEPs after Student began attending Kipp because of the absence of factual allegations as to Hawthorne School District. If Student intended to challenge the IEPs held prior to fall 2022 when Student was still attending Hawthorne School District, those IEPs have not been identified in the complaint except for the IEPs in May 2016, May 2017, and April 2018, all of which are outside the two-year statutory period. There are no factual allegations to support claims outside the statutory period. Student should allege the claims against each Respondent separately, identifying the IEPs at issue, and supported by sufficient factual allegations. Student should also clearly state if Student intends her claim to cover the period outside the two-year statute of limitation, i.e., prior to July 21, 2021, and if so, set forth the factual allegations supporting a claim beyond the statutory period.

Student's Issue 5 concerns Respondents' failure to design an appropriate IEP from "at least" July 2021. Issue 5 is insufficient for the same reasons as Issues 1 and 4. Again, as with the other issues, Student's conflation of the claims against Respondents into one issue, renders Issue 5 insufficient against both Respondents. There are insufficient facts alleged to support the claim against both Respondents for the identical

period. Moreover, Student does not identify any of the IEPs at issue in this claim. Student should allege the claims against each Respondent separately, identifying the IEPs at issue, and support each claim with appropriate factual allegations as to which part of the IEP was inappropriate and why. Student should also clearly state if Student intends her claim to cover the period outside the two-year statute of limitation, i.e., prior to July 21, 2021, and if so, set forth the factual allegations to support a claim beyond the statutory period, including which IEPs are at issue, which part of each IEP was allegedly inappropriate (e.g., services, goals, etc.) and why it was inappropriate.

Student's Issue 6 concerns the failure to produce Student's educational records. The allegations are insufficient because they are confusing and inconsistent. The heading Issue 6 appears to refer to only Kipp, but in the body of the allegations Student refers to a "District" failure to produce Student's records. Student's claim also states that "Respondent" failed to produce school records as required by "Education Code §§56504(b)(3) and 49060 and 20 U.S.C. §1415(b)(1)." However, there is no subsection (b)(3) to Education Code section 56504. It is also unclear how the other code sections cited were violated because neither specifically require a local educational agency to produce records. Student should also clearly identify all the records Student alleges were not produced, rather than using such phrases as "including but not limited to," which renders the claim vague. Student should cure the deficiencies discussed above, including clarifying against which entity this claim is asserted, and if against both Respondents, plead separate claims with specific factual allegations to support each of the claims including all the dates the alleged violations occurred.

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 insufficient. Here, Student uses the singular "Respondent" against which it seeks various remedies, but it is unclear which "Respondent" Student is referring to for each of the remedies. As such, the complaint is vague and fails to properly place Respondents on notice to enable them to prepare for hearing and participate in a resolution session or mediation. Student should clearly specify the Respondent against whom each remedy is sought.

Student attempted to remedy some of the issues with the complaint in the Notice of Errata. This is insufficient. To the extent that Student seeks to correct any allegations in her complaint, that should be done by way of an amended complaint not through a Notice of Errata. All of Student's allegations are required to be in a single self-contained pleading. By this Order, Student is given 14 days leave to amend.

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