BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LAKE TAHOE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023100760

ORDER GRANTING REQUEST FOR RECONSIDERATION AND DETERMINATION OF SUFFICIENCY OF COMPLAINT

NOVEMBER 22, 2023

On November 13, 2023, the undersigned Administrative Law Judge issued a determination of sufficiency of complaint. On November 15, 2023, Lake Tahoe filed a motion for reconsideration of determination of sufficiency of complaint. The Office of Administrative Hearings did not receive a response from Student.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten

days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION

Lake Tahoe offers new facts to support reconsideration. Specifically, Lake Tahoe alleges it did not receive Student's request for due process until October 25, 2023. Lake Tahoe provided evidence supporting its contention and Student did not argue otherwise. Lake Tahoe filed it notice of insufficiency on November 9, 2023. The receipt of the due process request is pertinent as the original determination of sufficiency found Lake Tahoe's November 9, 2023, notice of insufficiency untimely.

The motion for reconsideration is granted.

DETERMINATION OF SUFFICIENCY OF COMPLAINT

On reconsideration, Lake Tahoe met its burden to demonstrate it had not received the due process request until October 25, 2023, and thus, its notice of sufficiency was timely filed.

Student filed a Due Process Hearing Request, called a complaint, as to Lake Tahoe on October 24, 2023. On November 9, 2023, Lake Tahoe filed a notice of insufficiency.

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.)

Lake Tahoe also alleges Student pled issue that are outside the statute of limitations (20 U.S.C. § 1415 (f)(3)(C).). It is generally unclear whether Student is seeking to extend the statute of limitations and if so, on what basis. Numerous issues allege FAPE denials during the 2021 through 2023 school years. Student filed the complaint in October 2023. Therefore, claims arising after October 24, 2021, are within the statutory period. Although Student references the 2021-2022 school year, there is no clear allegation Student intends to litigate claims prior to that date with one possible exception. Student's Issue 1 E claims Lake Tahoe predetermined Student's IEP outcome throughout the 2019 through 2021 school years. As noted, claims arising after October 24, 2021, are within the statutory period. None of the 2019-2020 or 2020-2021 school year fall within the statutory period. Due to the ambiguity created, Student's complaint is insufficiently pled to the extent that claims are asserted prior to the Statutory period. However, all issues in the complaint raise contentions potentially occurring within the statutory period. Therefore, if Student is seeking to extend the statute of limitations, the complaint is insufficiently pled. Student will be given an opportunity to amend the complaint. If Student seeks to extend the statute of limitations, the amended complaint shall also state the theory upon which Student seeks an extension. If Student does not seek to the extend the statute of limitations, the claims will be limited to those arising within two years prior to the filing date.

Lake Tahoe also alleges claims raised by Student are barred by settlement agreement. The determination of sufficiency process is not the proper vehicle to determine such claims. Lake Tahoe correctly identifies any question regarding enforcement of a settlement agreement is the province of the California Department of Education's compliance procedure process. This order will make no finding on the applicability, enforceability, or existence of a settlement agreement. Nothing prevents Lake Tahoe from raising this claim as a defense or seeking redress through other

motions; however, Student's complaint is not insufficient due to a potential settlement agreement.

Student's complaint begins with a five-page narrative from Parent. In the narrative Parent alleges she has struggled for the past 24 months in obtaining an appropriate education for Student.

Following the narrative statement from Parent, Student alleges 24 issues arguing Lake Tahoe denied Student a free appropriate public education, called FAPE, from 2021 through 2023 by failing its child find obligation; failing to offer an appropriate IEP that addressed Student's social-emotional needs, academics, and safety concerns; failing to develop an IEP that contained appropriate, objective and measurable goals; failing to appropriately assess Student within 60 days; failing to offer Student an IEP to allow him to make meaningful academic progress; failing to provide a prior written notice; denying Parent meaningful participation in the IEP process; failing to provide Parent with critical information needed to make informed decisions; predetermining the outcome of Student's IEP; holding IEP team meetings without Parent present; providing all of Student's records within five days of request; failing to offer an appropriate continuum of placement options; unilaterally determine extended school year was not necessary for Student; failure to develop appropriate baselines for Student's goals; failure to offer any educational benefit; misrepresent Student's eligibility for special education; changing Student's educational program; failure to timely file for due process against Parent; failed to provide social skills services to Student; failure to timely delivery behavior emergency reports to Parent; failed to contact Student's doctors; failure to consider placement in the least restrict environment; failure to offer Parent a clear written offer of FAPE; failure to maintain Student's records; and intimidated Parent.

The liberal pleading standards of the IDEA require only sufficient information to provide an "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) To the extent Student's 24 issues fall within the statutory period, they provide Lake Tahoe sufficient information to allow it to participate in the resolution process and mediation.

ORDER

1. Lake Tahoe's Motion for Reconsideration was Granted.
2. On reconsideration, a substantive determination of the sufficiency of the due process complaint was made.
3. To the extent that Student did not raise claims arising before the two-year statute of limitations, the complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii). No amended complaint is needed to proceed on claims raised within the statutory period. Should Student have intended to raise claims prior to the two-year statutory period the complaint, the complaint is deemed insufficient. Accordingly, Student will be given an opportunity to file an amended complaint. That complaint must explicitly indicate Student seeks to extend the statute of limitations, the issues arising before the statutory period, and the basis upon which Student seeks to extend the statute of limitations. An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

4. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

Tiffany Gilmartin

Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings