BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SIERRA SANDS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024040516

ORDER DETERMINING DUE PROCESS COMPLAINT INSUFFICIENT

APRIL 19 2024

On April 10, 2024, 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 Sierra Sands Unified School District, called Sierra Sands. On April 17, 2024, Sierra Sands filed a notice of insufficiency as to the complaint.

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.)

Student's complaint alleges three insufficiently pled claims. As explained below, the complaint fails to provide Sierra Sands with the required problem description and the facts relating to the problem.

Issue One alleges Student was denied a free appropriate public education, called FAPE, beginning in March 2020. Issues Two and Three do not state the dates or school years at issue. Student's complaint was filed on April 10, 2024. Therefore, issues occurring during the 2021-2022 school year, arising on or after April 10, 2022, are within the two-year statute of limitations. (20 U.S.C. §§ 1415(b)(6) &(f)(3)(C); 34 C.F.R. § 300.507(a); Ed. Code, §§ 56501, subd. (a), 56505, subd. (*l*).) It is unclear whether Student is attempting to challenge decisions made about Student's education beyond the two-year statute of limitations for special education claims. (20 U.S.C. §§ 1415(b)(6) &(f)(3)(C); 34 C.F.R. § 300.507(a); Ed. Code, §§ 56501, subd. (a), 56505, subd. (l).) If Student intended to raise claims beyond the statutory period, they are insufficiently pled as no facts regarding exceptions or tolling of the statute of limitations are set forth to give Sierra Sands the requisite notice. For this reason, if Student intended to raise claims beyond the statutory period, the issues are insufficiently pled.

As to the specific claims pled for each issue in Student's complaint, the allegations are insufficient. Issue One alleges:

- Student was enrolled in online learning with no resources;
- Student was sent home daily by school personnel at Richmond Elementary School;
- Student was unable to travel on the school van to Autism Academy; and
- Changes were made to Student's individualized education program, called IEP, without an IEP team meeting.

Issue One is insufficient because it is does not state facts about when these events occurred, including the date of the IEP which allegedly was changed without an IEP team meeting. Issue One also is vague and confusing because it refers to two different placements. Finally, Issue One fails to allege denial of a FAPE. Student's Issue

One fails to provide the requisite notice to Sierra Sands to defend itself in this matter and enable it to participate in mediation and the due process hearing.

With respect to Issue Two, the complaint alleges Parent was not provided progress reports or academic assessments and was given inaccurate attendance records. Again, Student does not allege the date or school year during which Student believes Sierra Sands denied Student a FAPE or specify which IEP or IEPs are at issue. Issue Two fails to state sufficient facts to provide Sierra Sands an awareness and understanding of the problem.

Issue Three also is insufficiently pled. Student's complaint alleges he has "been denied IEP renewals" and "updates" but does not specify for which school year. Issue Three also alleges changes were made to a July 2023 IEP around November 6, 2023, but does not state what changes were made, or when this occurred, or how this denied him a FAPE. Issue Three is insufficiently pled.

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).) Student's complaint fails to state a proposed resolution to the issues alleged. Therefore, Student has not met the statutorily required standard regarding proposed resolutions.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent without an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parent is encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. The complaint is insufficient under title 20 United States Code section 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 United States Code 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.
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.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings