BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

and

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023100821

ORDER DETERMINING DUE PROCESS COMPLAINT IS SUFFICIENT IN PART AND INSUFFICEINT IN PART

NOVEMBER 13, 2023

On October 23, 2023, 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. On November 7, 2023, Sacramento City filed a Notice of Insufficiency as to the complaint. On November 13, 2023, Student filed a response.

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

Student's complaint alleges three problems or complaints, issues one and three allege several claims within the issue. Some of Student's claims are sufficient and some are insufficient. The issues are discussed below.

Student's issue one alleges a denial of a free appropriate public education, called FAPE, beginning August 31, 2023, and contains six claims. Issue one's first claim alleges that Sacramento City did not provide paraprofessional support every day. Student states the paraprofessional would either be absent or only present half-days. Student complains that Parent was not informed of the paraprofessional's absence. The first claim is sufficiently pled because it describes the problem relating to the provision of a FAPE to Student and includes sufficient facts about the problem.

Student's issue one, claim two, is not sufficiently pled in part and sufficiently pled in part. Claim two alleges the general education English teacher refused to comply with the IEP. The second claim also alleges the PE teacher was unaware of accommodations for type 1 diabetes and ASD. To the extent that these claims assert the failure to implement Student's IEP, specifically in English and accommodations in PE, the issue is sufficiently pled. The second claim, however, also alleges that the ethnic studies teacher and principal were unaware of IEP guidelines or special education guidelines. It is unclear what guidelines Student is referencing or how the guidelines affect the provision of FAPE to Student. Student's issue one, claim two, is sufficient regarding the failure to implement Student's IEP. It is insufficient regarding claims about the failure to know about IEP or special education guidelines.

Issue one, claim three, alleges Student's paraprofessional failed to manage Student's behavior. The complaint described the circumstances in which this failure

occurred, based on the paraprofessional allowing Student to use his cell phone during class when that behavior was not permitted. Student's issue one, claim three, is sufficiently pled as it provides Sacramento City an awareness and understanding of the problem.

Issue one, claim four, is sufficiently pled. Student's complaint states the paraprofessional was not qualified and did not communicate Student's daily progress. This raises two contentions. The first is that Student was denied a FAPE because the paraprofessional was not qualified. To the extent the second contention alleges a failure to implement Student's IEP by not providing daily progress updates, it is sufficiently pled.

Student's issue one, claim five, is insufficiently pled. Based on a typo, it is unclear where Student was alleged to have been when another student gave him something that was non-edible as it states Student was in "adabnger". Claim five alleges that the principal did not inform Parents of this incident and that eating the non-edible item could have harmed Student based on his type 1 diabetes. Student must provide additional facts to give Sacramento City an awareness of the issue being raised in claim five, such as the date, time, and location of this alleged incident and a description of the non-edible item or why the non-edible item would have affected Student's type 1 diabetes such that it would result in a denial of FAPE.

The text of issue one, claim six, is partially cut off. The last several words in issue one, claim six, are only partially visible and are not legible. The legible part of claim six references two days of independent study and alleges Student did not receive an independent study packet, but unfortunately the remainder of sentence is illegible. As a result, it is not clear how Sacramento City denied Student a FAPE. Additional information about what Student should have received, and how the lack of providing

that information or service to Student resulted in a denial of FAPE would clarify the issue and inform Sacramento City of the basis of this allegation. Issue one, claim six, is insufficiently pled.

Student's issue two is insufficiently pled. It states that a board certified behavior analyst, referred to as BCBA, replaced the paraprofessional service provider and that Parent offered to waive a denial of FAPE. Student then alleges that the principal aggressively targeted him and denied him a FAPE and civil rights. It is unclear what Student is alleging that the principal or Sacramento City did to deny him a FAPE.

In the complaint, Student's issue three alleges three claims, each of the claims are insufficiently pled. Issue three, claim one, alleges that the principal violated Student's civil rights by suspending him for behaviors that were related to a denial of FAPE. It is unclear what were Student's behaviors and how the suspension resulted in a denial of FAPE. Claim two alleges that the principal violated the education code by not sending a notice prior to imposing a suspension of Student. It is not clear if a denial of FAPE is being alleged regarding issue three, claim two, or if Student is alleging a violation of the education code. Student's issues three, claim three, is cut off and the last several words are illegible. The legible part of claim three is regarding a former Sacramento City employee that had engaged in online bullying of Student and disclosed private ADA information about Student. It is unclear how Student believes he was denied a FAPE based on the facts in claim three. All three claims alleged under issue three are insufficiently pled and require additional details to describe what happened and how Student believes it denied him a FAPE.

Issues one, claims one, two in part, three, and four are sufficiently pled to put Sacramento City on notice as to the basis of Student's complaint.

With regard to issue one, claims two in part, five and six; issue two; and issue three, claims one, two, and three, Student fails to allege sufficient facts to inform Sacramento City the basis of the allegations. Therefore, Student has failed to provide sufficient facts supporting these claims, and they are insufficient.

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.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issue one, claims one, two in part, three, and four of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue one, claims two in part, five, and six; issue two; and issue three, claims one, two, and three, of Student's 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 only on issue one, claims one, two in part, three, and four in Student's complaint.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings