BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021040890

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

MAY 10, 2021

On April 27, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Lodi Unified School District as respondent. On May 10, 2021, Lodi filed a Notice of Insufficiency as to the 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).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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.] 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 46541, 46699.)

DISCUSSION

Student's complaint alleges three insufficiently pled claims.

1. Did the District fail to provide Maritza an appropriate education since at least April 27, 2019?
2. Based on the failure to provide an appropriate program and services in the since April 27, 2019, does the District owe compensatory services to Student?
3. Are there procedural and substantive violations of the law that entitle Student and her family to appropriate relief including compensatory services and an on-going appropriate program?

These claims are set forth at the beginning of a 13-page complaint that is primarily made up of recitations of boiler plate law as opposed to facts upon which the claims are based. In addition to the initial statement of issues, Student includes the following additional information related to Issue number one:

A. At all times relevant herein, the District's agents and employees have failed to appropriately consider the family's input, recommendations, and concerns for Student's education in violation of 34 C.F.R. § 300.324(a)(1)(ii);

B. In offering a program for Student, the District personnel have been unable to consider relevant assessment data and meet the full extent of Student's academic, developmental and social and emotional needs in violation of 20 U.S.C. §1414(d)(3)(A)(iv) and 34 C.F.R. § 300.324(a)(1)(ii)-(iv);

C. The District's program and services failed to provide Student with adequate levels of related services of the type she requires in order to make meaningful progress in all of her areas of need in violation of 20 U.S.C. §1414(d)(1)(A)(IV)(aa)-(cc);

D. The documents relied upon by the District for the relevant time periods have failed to include an accurate statement of Student's levels of performance or a complete and full description of the manner in which Student's challenges affected her involvement and progress in the general education curriculum, in violation of 20 U.S.C. § 1414(d)(1)(A)(I)(aa);

E. The documents relied upon for the relevant time periods failed to provide for the full extent of measurable annual goals, including academic goals, sufficient to meet Student's needs resulting from her disability, in violation of 20 U.S.C. § 1414(d)(1)(A)(i)(II); and

F. The documents relied upon for the relevant time period failed to contain the frequency, duration and type of related services Student required.

The complaint fails to provide Lodi with the required problem description and the facts relating to the problem that would enable them to sufficiently prepare to participate in a resolution session or mediation. With respect to issue number one, Student has failed to provide facts that would allow Lodi to understand Student's alleged denial of FAPE since April 27, 2019. No details are set forth as to when actions denying FAPE were supposed to have taken place, or how FAPE was denied. No facts provide insight into what recommendations, input or concerns were not considered by staff or the source of those. No facts are offered as to academic, developmental or social emotional needs that were not addressed or when the needs were not addressed. Nor are there facts as to any assessments that were not conducted or considered. No goals or other documents are identified as having inaccurately described Student's present levels of performance and no facts regarding the source or date of inadequately described abilities have been asserted. No inadequate goals are identified. Although Student alleges inadequate related services, she fails to identify what needed related services were not provided.

Nor are additional facts are provided as to issues two and three. While issue two is actually a remedies question that is not required to be separately pled, the complaint fails to state any facts asserting a basis for Lodi owing compensatory education. Issue three asserts procedural violations of the IDEA over an unspecified time period. The violations are not described.

Although the pleading requirements of the IDEA are liberally construed, they do require that facts be identified as to the violations pled. Educational agencies are entitled to information regarding when and how they are alleged to have fallen short of the requirements of federal and state special education laws.

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. All dates previously set in this matter are vacated. A new scheduling order will

be issued upon receipt of a timely-filed amended complaint.

5. If Student fails to file a timely amended complaint, the complaint will be dismissed.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings