BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MOUNT SHASTA UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2023070448

ORDER DETERMINING DUE PROCESS COMPLAINT IS SUFFICIENT

AUGUST 3, 2023

On July 17, 2023, 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 Mount Shasta Union Elementary School District. On August 1, 2023, Mount Shasta 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).

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

The facts alleged in Student's complaint are sufficient. Student alleges two issues involving the 2021-2022 and 2022-2023 school years. For each school year, Student

makes several claims. Generally, Mount Shasta contends that the complaint contains insufficient facts related to the problem and the allegations are unclear. Student's complaint is not well written, has several typos, and contains case law that does not help clarify the issues for hearing. However, because the pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA, the complaint is deemed sufficient.

Student's Issue 1a alleges a denial of a free appropriate public education, called FAPE, based on failing to offer speech and language services to meet Student's needs. Mount Shasta claims that Student's Issue1a is vague and unsupported by facts. Mount Shasta contends that although the issue alleges a denial of a FAPE, for the 2021-2022 school year, the facts only discuss the May 27, 2022, individualized educational program, referred to as IEP. Mount Shasta also argues the complaint fails to explain what is meant by "much more" speech and language services and fails to explain why Student contends she requires more services. Student's claim in Issue 1a is sufficient to describe the problem regarding the provision of FAPE and includes facts about the problem. Mount Shasta's request to state the issue as limited to the offer in the May 27, 2022, IEP may be considered and clarified at the prehearing conference. Issue 1a is sufficiently pled.

Mount Shasta alleges Issue 1b is vague and unsupported by facts. Student's Issue 1b alleges a denial of FAPE during the 2021-2022 school year based on failing to offer behavior intervention services, a behavior intervention plan, or occupational therapy services in the May 27, 2022, IEP. Student's Issue 1b contains sufficient facts to describe the problem and facts about the problem and therefore meets the minimal requirement of the IDEA. Issue 1b is sufficiently pled.

Mount Shasta contends Issues 1c and 2f are vague, unsupported by facts, and fail to identify the IEP at issue. Issue 1c alleges a denial of FAPE during the 2021-2022 school year by failing to offer or provide applied behavioral analysis program at home and clinic meetings. Issue 2f alleges a denial of FAPE by failing to offer sufficient one to one aide services during the 2022-2023 school year. For Issues 1c and 2f, Student provides enough facts about the problem to provide an awareness and understanding of the issues forming the basis of these allegations. Issues 1c and 2f are sufficient.

Mount Shasta alleges Student's Issues 1d and 2c are vague and unsupported by facts. Issues 1d and 2c allege denials of FAPE based on failing to offer Parent training in speech and language and behavior during the 2021-2022 and 2022-2023 school years, respectively. Student provides sufficient facts to describe the problem and facts about the problem for Issues 1d and 2c as required by the IDEA. As a result, Student's Issues 1d and 1c are sufficiently pled.

Mount Shasta contends Issue 1e is unclear and does not allege facts as to why failure to find Student eligible for services under the category of autism constitutes a denial of FAPE. Student's Issue 1e states that Mount Shasta denied her a FAPE during the 2021-2022 and 2022-2023 school years by not finding Student eligible under the category of autism. Student's Issue 1 broadly states the claims are related to the 2021-2022 school year. Student makes it clear in the Issue 1e issue statement that this allegation also is intended to raise claims related to the 2022-2023 school year. Student provides enough information to provide an awareness and understanding of the issue forming the basis of this allegation. As a result, Student's Issue 1e is sufficient and alleges claims that occurred during the 2021-2022 and 2022-2023 school years.

Mount Shasta alleges Issues 2a, 2b, 2g, and 2h are vague and unsupported by facts. Student's Issue 2a alleges a denial of FAPE during the 2022-2023 school year by

failing to offer behavior intervention services, a behavior intervention plan, and occupational therapy services. Issue 2b alleges a denial a FAPE during the 2022-2023 school year by failing to offer at-home applied behavior analysis services and clinic meetings. Issue 2g alleges a denial of FAPE during the 2022-2023 school year by failing to provide adequate goals at the October 20, 2022 IEP team meeting. Issue 2h alleges a denial of FAPE during the 2022-2023 school year by failing to offer placement with neurotypically developing peers to the maximum extent possible. For Issues 2a, 2b, 2g, and 2h, Student describes the problem and includes facts about the problem to inform Mount Shasta the reasons why Student believes she was denied a FAPE. The information provided for Issues 2a, 2b, 2g, and 2h meets the pleading requirements of the IDEA, and as a result are sufficiently pled.

Mount Shasta contends Issue 2d is insufficient because it fails to allege facts regarding regression. Student's Issue 2d alleges a denial of FAPE during the 2022-2023 school year based on failing to address Student's regression at the October 20, 2022, and February 14, 2023, IEP team meetings. Student's complaint refers to "the Principal Update" dated December 1, 2022, February 2023, and May 2023, that describes Student's behavior during the time period at issue. Although the complaint fails to specify that regression was in the area of behavior, the facts describe problems with Student's behavior. As a result, Issue 2d is sufficiently pled to allege a denial of FAPE based on regression in Student's behavior.

Mount Shasta contends Issue 2e fails to allege facts regarding a need for extended school year. The facts to support the claim in Issue 2e are the same facts as Issue 2d. Student alleges that based on her regression in behavior, Mount Shasta should have offered extended school year services in summer of 2023. Student's

complaint provides a sufficient description of the problem and facts about the problem. Accordingly, Issue 2e is sufficiently pled.

Mount Shasta alleges Student's Issue 2i is vague and unsupported by facts. Issue 2i alleges a denial of FAPE by predetermining the October 20, 2022 IEP offer based on two reasons. Student claims predetermination is based on Mount Shasta's failure to honor Parent's requests to provide a behavior aide and that Mount Shasta used a document titled "Placement/Exit Agreement" to determine when Student's placement would change. Issue 2i is sufficiently pled because the complaint describes the problem and includes sufficient facts about the problem to provide an awareness and understanding of the issues forming the basis of the complaint.

Student's complaint identifies the issues and adequate facts about the problem to permit Mount Shasta to respond and participate in a resolution session and mediation. Therefore, Student's statement of the two issues is sufficient.

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 well defined. As a result, Student has met the statutorily required standard regarding proposed resolutions.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings