BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

YUBA CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023050319

ORDER FINDING DUE PROCESS COMPLAINT SUFFICIENT IN PART AND INSUFFICIENT IN PART

MAY 24, 2023

On May 8, 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 Yuba City Unified School District. On May 23, 2023, Yuba City 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, and 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.)

The facts alleged in Student's complaint are sufficient in part, and insufficient in part. The complaint identifies the issues and adequate facts about the problems in the issues identified below to permit Yuba City to respond and participate in a resolution session and mediation.

Issue 1. At Issue 1, Student alleges that from May 2021 through the end of the 2020-2021 school year, Yuba City denied her a free appropriate public education, called a FAPE, by failing to provide the in-person services and accommodations required by Student's February 13, 2020, January 26, 2021, and April 13, 2021 individualized

education programs, called IEPs, because Student was placed on distance learning. Yuba City contends that Student was not on distance learning at that time, but that is a matter of proof at hearing, on which Student bears the burden of proof. Issue 1 is sufficient.

Issue 2. Student alleges at Issue 2 that Yuba City should have, but did not, assess Student to determine the services and supports Student needed to access her education while on distance learning from May 2021 to the end of the 2020-2021 school year, resulting in a distance learning program that Student could not access during that time. As to this issue, and all others in Student's complaint, the sworn declaration of Yuba City's Director of Student Support states that Parent was unable to provide a satisfactory explanation of each issue at a resolution session. While this may be true, a notice of insufficiency looks to the facts and allegations in the written complaint and does not consider the Parent's ability to articulate legal claims. Issue 2 is sufficient.

Issues 3a through 3c. Student alleges at Issues 3a through 3c that Yuba City denied Student a FAPE from January 2021 through April 6, 2022, by failing to appropriately assess Student in all areas of need, specifically occupational therapy, speech therapy, vocational needs, and assisted living skills, by offering Parents a pre-determined IEP, and as a result interfering with Parent's participation in the January 26, 2021, April 13, 2021, and April 6, 2022 IEPs. Yuba City asserts that the first two IEPs are outside of the two-year statute of limitations for special education claims, and that Student fails to allege facts raising an exception to the statute of limitations.

The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445; *E.J.*

v. San Carlos Elementary School Dist. (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or by the local educational agency's withholding of information that was required to be provided to the parent.

An IEP is measured at the time that it was created. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) Accordingly, a parent may not bring a due process claim challenging the appropriateness of an IEP that was created outside the statute of limitations.

Here, Student does not allege an exception to the statute of limitations for the claims in Issues 3a through 3c. Accordingly, Issues 3a through 3c are insufficient as to the January 26, 2021, and April 13, 2021 IEPs, which were developed more than two years before the May 8, 2023 filing of Student's complaint. Student's claims regarding those IEPs are barred by the statute of limitations. Issues 3a through 3c are sufficient as to the April 6, 2022 IEP only.

Issue 4. Student alleges at Issue 4 that Yuba City denied Student a FAPE by failing to assess for, and address, Student's regression during distance learning. Issue 4 does not expressly state the period of time that such an assessment should have taken place or specify an IEP that did not take account of Student's alleged regression. However, the body of the complaint alleges that Student should have been assessed for regression between May 2021 and June 2021. Issue 4 is sufficient as to the period May 8, 2021, to June 2021 only.

Issue 5. Student alleges at Issue 5 that Student was denied a FAPE because she was not offered extended school year for the 2020-2021 and 2021-2022 school years. Student alleges that Yuba City was aware that Student was prone to regression but did not assess Student to determine if she required extended school year services in summer 2021 or summer 2022. Issue 5 is sufficient.

Issue 6. Student alleges at Issue 6 that Student was denied a FAPE because she was not offered the least restrictive environment, occupational therapy, or a one-to-one aide from May 2021 through March 2023, when Student left the district. Student alleges she did not meet her social emotional goals or speech and language goals in the January 26, 2021, or April 1, 2021 IEPs, but could have met these goals and participated in general education with a one-to-one aide and occupational therapy. Issue 6 is sufficient.

Issues 7a and 7b. Student alleges at Issues 7a and 7b that Student was denied a FAPE from April 2021 through May 8, 2023, because Yuba City did not timely schedule an IEP team meeting to provide Student with needed services and failed to develop a legally compliant and complete IEP during that time. However, the facts alleged in support of that issue are limited to alleged deficiencies in the January 26, 2021, and April 13, 2021 IEPs, claims against which are barred by the statute of limitations. Student does not allege an exception to the statute of limitations. Issues 7a and 7b are insufficient.

Issue 8. Student alleges at Issue 8 that Yuba City denied Student a FAPE by failing to develop IEPs that were reasonably calculated to enable Student to receive educational benefit and by failing to provide adequate goals in all areas of need. No period of time is specified, and no IEPs are identified in the issue. The facts alleged in support of the issue challenge the only content of the February 13, 2020, January 25,

2021, and April 13, 2021 IEPs. In support of this issue, Student's complaint includes a difficult to decipher graphic with shifting columns of goals, but only the goals in the columns for the January 26, 2021 IEP, and April 13, 2021 IEP, contain bold type sentences critical of those goals, which may or may not be additional allegations. Both of those IEPs were developed more than two years prior to the filing of Student's complaint, and Student's claims as to the development of those IEPs are barred by the statute of limitations. No facts are alleged regarding an exception to the statute of limitations. Issue 8 is insufficient.

Issue 9. Student alleges at Issue 9 that Student was denied a FAPE when her eligibility under the category of autism was removed from the April 13, 2021 IEP. The April 13, 2021 IEP was developed more than two years prior to the filing of Student's complaint, and Student's claim that the IEP incorrectly failed to include autism as an eligibility category is barred by the statute of limitations. No facts regarding an exception to the statute of limitations are alleged. Issue 9 is insufficient.

Issue 10. Student alleges at Issue 10 that Yuba City denied Student a FAPE from May 2021 through March 2023, by failing to offer Student a one-to-one aide, occupational therapy, speech therapy, behavior services, or a behavior intervention plan. The facts allege details asserting Yuba City was on notice that Student demonstrated the need for these services throughout the designated period, and Yuba City did not assess Student or call an IEP team meeting to offer her these services. Issue 10 is sufficient.

ORDER

1. Issues 1, 2, 5, 6, and 10 of the complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues 3a, 3b, and 3c are sufficient as to the April 6, 2022 IEP only.

3. Issue 4 is sufficient as to the period May 8, 2021, through June 2021.
4. Issues 7a, 7b, 8, and 9 of the complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
5. Issues 3a, 3b, and 3c are insufficiently pleaded as to the January 26, 2021, and April 13, 2021 IEPs.
6. Issue 4 is insufficiently pleaded as to any period of time prior to May 8, 2021.
7. Student will be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
8. The amended complaint must comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and must 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.
9. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2, 3a through 3c as to the April 6, 2022 IEP only, 4 as to the period May 8, 2021, through June 2021 only, 5, 6, and 10.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings