BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA SCHOOL OF THE ARTS - SAN GABRIEL VALLEY.

OAH CASE NUMBER 2023010440

ORDER DETERMINING COMPLAINT PARTIALLY SUFFICIENT AND DISMISSING ISSUES ONE AND TWO

MARCH 21, 2023

On January 18, 2023, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming California School of the Arts San Gabriel Valley, as respondent. Student's complaint has been determined to be insufficient on two prior occasions in order on January 31, 2023 and February 23, 2023. Student filed a second amended complaint on March 8, 2023. On March 20, 2023, California School of the Arts filed a third notice of insufficiency asserting Student has again failed to correct the deficiencies identified in prior orders. OAH received no response to the most current Notice of Insufficiency from Student.

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.] 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.)

SUFFICIENCY ANALYSIS

Student's third attempt to assert claims in this case is also found deficient. As explained more fully, later in this order, Student's inability to sufficiently allege claims stems, in part, from Student's complaint failing to allege facts that prior orders of insufficiency determined were necessary.

STUDENT'S INTRODUCTORY COMMENTS

Student's section entitled "Jurisdiction and Corrections to Deficiencies Found in the Determination of Insufficiency" asserts arguments directed toward ALJ Hohensee's order rather than allegations intended to be included in the complaint. Additionally, the second amended complaint includes two different sections entitled "Issues" which include overlapping information. It is unclear which section Student intends to allege claims in this case.

JURISDICTION & TIMEFRAME

Student has failed state all jurisdictional elements of 20 U.S.C. § 1415 (b)(7)(A)(ii). Additionally, Student has also failed to clearly allege dates associated with asserted claims, which has been noted in the prior two orders determining Student's complaints insufficient. The lack of timeframe information denies California School of the Arts the information necessary to prepare for resolution, mediation and hearing.

SECOND AMENDED COMPLAINT ISSUE NUMBER ONE

Student's issue number one remains unintelligible. Student's second amended complaint asserts, "The details of these disagreements are not before OAH in this complaint … The issue before OAH is Student's right to that hearing."

Not every requirement identified by the Individuals with Disabilities Education Act, or IDEA, is within OAH's jurisdiction. As was pointed out in the two prior orders determining Student's complaints insufficient, Student has failed to allege facts related to his records claim that are within the jurisdiction of OAH.

A party has the right to present a complaint regarding matters involving a proposal, or refusal to, initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility. (Ed. Code, § 56501, subd. (a).) OAH only has jurisdiction over these claims. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) It is not clear how Student's issue number one falls within OAH jurisdiction. This lack of clarity results in California School of the Arts being unable to prepare for resolution, mediation or hearing.

SECOND AMENDED COMPLAINT ISSUE NUMBER TWO

Issue number two, in both issue statements, appears to seek reimbursement for neurofeedback therapy. Initially, Student's complaint fundamentally fails to allege that he is, or was eligible for special education. This was also noted in the order determining Student's first amended complaint insufficient. Furthermore, Student has been directed in two prior orders, determining his complaint insufficient, to provide facts regarding Student's educational need for neurofeedback treatment. Student has failed to allege a need for neurofeedback therapy. In fact, Student asserts on page five, "Student may not have lost personally any educational benefits" due to the therapy being refused. Student's conclusory statements that he "needed it to access his education" or her

needed it to enable "further education, employment and independent living," or even that "the therapy was provided to remedy cognitive deficits caused by Covid-19" are vague and do not provide California School of the Arts the necessary information regarding how the need was impacting his education, so California School for the Arts can prepare for resolution session, mediation or hearing, especially in light of a failure to allege special education eligibility. Simply asserting California School for the Arts "arbitrarily and capriciously" denied the request for reimbursement is not enough, as has been stated in the past two orders.

In Student's second issue statement at page 10 of the second amended complaint, Student also asserts that California School of the Arts predetermined IEPs that refused services for the effects of "long-hauler Covid-19 effects." Student was previously directed to identify the IEPs that were predetermined by date, as the only facts alleged are that the "long hauler Covid-19 effects" persisted throughout 2021 and into 2022. The lack of information regarding which IEPs were predetermined combined with the fact Student has failed to allege he was eligible for special education during the times in question, render Issue number two insufficient. The complaint fails to give California School of the Arts adequate information to prepare for resolution session, mediation and hearing. Student has been asked for these facts twice before.

SECOND AMENDED COMPLAINT ISSUE NUMBER THREE

Student alleges, in issue number three, that California School of the Arts acknowledged during an IEP that Student had a developmental vision disability which required assessment in November of 2021. Student further asserts that the school failed to assess. Student has stated adequate facts to put California School of the Arts on notice of this claim and allow it to prepare for resolution, mediation and hearing.

CONCLUSION

OAH generally allows parties the opportunity to amend a complaint to state a claim following a determination that a complaint is insufficient. However, in this case, Student has been given two opportunities to amend his complaint. Instead of accepting the direction of the orders determining the complaints insufficient, and crafting a complaint that corrected the deficiencies, Student submitted amended complaints arguing with the conclusions and failing to provide sufficient information. Student is not self-represented. He is represented by an attorney who has refused to accept the directions of this tribunal in the orders determining the prior complaints insufficient. As a result, the claims not sufficiently pled will be dismissed.

ORDER

1. Issue Number three, alleging a failure to assess for a developmental vision disability is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue numbers one and two of the complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student has had two prior opportunities to correct the deficiencies of Issues one and two and has chosen not to provide the required information. Issues numbers one and two are hereby dismissed. No further complaint

amendments shall be allowed in this matter.

4. The hearing shall proceed only on Issue number three of Student's complaint. The hearing shall proceed on the dates currently scheduled.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings