BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LAKE TAHOE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023050660

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

MAY 25, 2023

On May 12, 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 Lake Tahoe Unified School District. On May 23, 2023, Lake Tahoe 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 Individuals with Disabilities Education Act, called 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 insufficient. The complaint fails to provide Lake Tahoe with the required problem description and the facts relating to the problem. Student fails to identify the dates of individualized education programs, called IEPs, the alleged defects of particular IEPs, the dates of assessments, the dates of records requests, or any other specific information about each issue. Student makes broad allegations without specific facts, which creates what appear to be contradictory or duplicative claims. Student's complaint does not identify the issues and adequate

facts about the problems to permit Lake Tahoe to respond and participate in a resolution session and mediation.

The complaint contains pages of irrelevant criticisms of Lake Tahoe, its employees, and administrators, and sometimes refers to other students, who are not a party to this due process proceeding, creating confusion. It is occasionally unclear if Student is alleging a generic claim regarding Lake Tahoe's alleged conduct towards a group of students, which does not state an IDEA claim, or a specific claim about Student and his educational program, which does state an IDEA claim.

Student alleges at Issue 1a that Student was denied a free appropriate public education, called a FAPE, because although Parent has asked Lake Tahoe for two years to assess Student to determine why he cannot read, write, or calculate near grade level, Lake Tahoe has not conducted an assessment. Student revisits this claim at Issue 1i, which alleges that assessments of Student were not timely conducted. Together, these claims are vague and confusing. Student does not allege the dates of the requests, or which requests resulted in assessments, and which did not. Issue 1a is insufficient.

Student alleges at Issue 1b that Lake Tahoe did not respond to Parent's assessment requests from 2012 through 2023, with a prior written notice. However, as discussed at Issue 1a, Student alleges that some requests were ignored, and that some assessments were untimely conducted. Student does not identify the requests that he contends obligated Lake Tahoe to respond with a prior written notice. Lake Tahoe is entitled to specific facts regarding which Parent requests Student contends required a prior written notice in response. Issue 1b is insufficient.

Issue 1c alleges that Lake Tahoe did not consider Parent's suggestions, ideas, requests, or demands over the past two years, and so denied her participation in the

process of developing Student's IEPs. Student does not allege the IEP team meetings at which Parents' input was allegedly ignored, and Issue 1c is impermissibly vague. Issue 1c is insufficient.

Student alleges at Issue 1d that Lake Tahoe did not give Parent critical information to make informed decisions about Student's IEPs. The issue also vaguely references all parents of students with disabilities, making it unclear if Student is alleging a larger generic problem, or a specific denial of FAPE as to Student only. Student fails to identify the information that was withheld, or the IEPs at issue. Issue 1d is insufficient.

Student alleges at Issue 1e that Lake Tahoe predetermined placement in Student's IEPs from the 2019-2020 and 2020-2021 school years, and it is unclear if these are encompassed within Issue 1 at all, because the stated time period for all claims is 2021 through 2023.

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.

If Student is challenging an IEP from the 2019-2020 school year, or an IEP created before May 12, 2021, during the 2020-2021 school year, more than two years before the filing of Student's complaint, that claim is barred by the statute of limitations. Student has not alleged facts regarding an exception to the statute of limitations. Student has not identified the IEP or IEPs which Parent contends were predetermined. Issue 1e is insufficient.

Student alleges at Issue 1f that Lake Tahoe did not provide Parent with all of Student's educational records upon request, although lake Tahoe provided some records. Student does not indicate if the requests were oral or in writing, the dates of the requests, or what information Student contends is missing. Issue 1f is insufficient.

Student alleges at 1g that Lake Tahoe from 2021 through 2023, failed to offer an IEP that addressed Student's social emotional, academic, or safety needs. It is unclear if Student is alleging that no IEP offer was made, or IEP offers were made and were deficient. If Student is alleging that IEPs were insufficient, Student fails to identify the IEPs that he contends did not adequately address his social emotional, academic, or safety needs. Issue 1g is insufficient.

Student alleges at Issue 1h that all goals written between 2021 and 2023, are fatally flawed as unmeasurable, subjective, and not linked to Student's baselines. Student does not identify the IEPs or the goals in dispute. Issue 1h is insufficient.

Student alleges at Issue 1i that Lake Tahoe has not offered Student appropriate and timely assessments within a 60-day timeline. As discussed at Issue 1a, Student confusingly alleges conflicting claims of a failure to assess, and a failure to conduct assessments in a timely manner. This claim is also confusing, as it is unclear if Student is alleging a failure to offer assessments, or a failure to timely conduct and review assessments at an IEP team meeting. If Student is contending that assessments were not timely conducted, Student fails to identify those assessments. Issue 1i is insufficient.

Student alleges at Issue 1j that the IEPs from 2021 through 2023, were not reasonably calculated for Student to make meaningful academic progress, apparently because Student's teacher abandoned him and curriculum was not provided. It is unclear if Student is alleging a failure to offer FAPE, or a failure to implement his IEPs. In either case, Student fails to identify the IEPs that failed to offer a FAPE and provide facts on why they did not offer a FAPE, or identify the IEPs that were not implemented and provide facts on how Lake Tahoe failed to implement Student's IEP or IEPs. Issue 1j is insufficient.

Student alleges at Issue 1k that Lake Tahoe failed to discuss a continuum of placement options, specifically when she was accompanied by an aide. It is unclear if Student is contending that Lake Tahoe staff would not discuss placements with Parent at one or more IEP team meetings, or outside of an IEP team meeting. Issue 1k is insufficient.

Student alleges at Issue 1l that Lake Tahoe failed to offer Student extended school year service. Student fails to identify the dates of the IEP or IEPs that failed to make this offer. Issue 1l is insufficient.

Student alleges at Issue 1m that Lake Tahoe did not develop appropriate baselines for Student's behavior goals. Student fails to identify which IEP or IEPs did not contain accurate information about Student, and it is unclear if Student is alleging defects in the same IEPs as Issue 1h, or if this is a separate issue rather than a repeat of Issue 1h. Issue 1m is insufficient.

Student alleges at Issue 1n that Lake Tahoe did not offer Student an IEP under which he could make behavioral or academic progress. Student alleges that Lake Tahoe did not take a doctor's letter into account, or assess Student, and so failed to develop appropriate baselines or offer a FAPE. Student does not identify the IEPs, and it is unclear if Student is alleging that the same IEPs in Issue 1g that did not meet Student's social emotional, academic, or safety needs are the same IEPs that did not meet Student's behavioral and academic needs, or whether the two claims question different IEPs at a time when Student had different needs. Issue 1n is insufficient.

Student alleges at Issue 1o that Lake Tahoe denied him a FAPE by making deliberate or negligent misrepresentations to Parent about whether Student qualified for a one-to-one aide. In a due process hearing, the inquiry is whether a Student received appropriate services, and for special education purposes, it is irrelevant if the services were not received due to intentional or negligent action or inaction. It is unclear if Student is seeking to state a claim under the IDEA, or another state or federal statute, with intent or negligence as criteria. OAH does not have jurisdiction over non-IDEA claims. (See *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Issue 1o is insufficient.

Student alleges at Issue 1p that Lake Tahoe and its Special Education Local Plan Area, or SELPA, secluded Student in the home and changed his educational program during distance learning, resulting in a failure to implement Student's IEP. COVID-19

distance learning programs were developed and implemented for the most part during the 2019-2020 school years, and spring 2021, both of which occurred more than two years prior to the filing of Student's complaint and would be barred by the statute of limitations, at least to the extent the IEP in question was developed and implemented before May 12, 2021. This issue also alleges ongoing failures to implement through May 12, 2023, but fails to identify the IEPs or specific facts about the alleged failures to implement. Issue 1p is insufficient.

Student alleges at Issue 1q that Lake Tahoe did not timely file for due process when Parent did not consent to Student's IEP. Student fails to identify the date of the IEP, or when Parent communicated her intent not to consent to that IEP, resulting in a vague and confusing claim. Issue 1q is insufficient.

Student alleges at Issue 1r that Lake Tahoe formed a sham SELPA with another district, defrauding students and their parents of real value or benefit. This is not a claim relating to a proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student with a FAPE. OAH does not have jurisdiction over this claim. Issue 1r is insufficient.

Student alleges at issue 1s that Student was denied a FAPE because he was not offered social skills training. Student fails to identify the IEP or IEPs in question, so lacks specificity. Issue 1s is insufficient.

Student alleges at Issue 1t that Lake Tahoe did not timely follow the law in delivering behavioral emergency reports to Parent. This is not a claim relating to a proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student with a FAPE. OAH does not have jurisdiction over this claim. Issue 1t is insufficient.

Student alleges at Issue 1u that Lake Tahoe failed to contact Student's physicians to obtain current information on Student's behavioral issues. This issue is alleged out of context and is vague and confusing. As written, this is not a claim relating to a proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student with a FAPE, and OAH does not have jurisdiction over this claim. Issue 1u is insufficient.

Student alleges at Issue 1v that Lake Tahoe failed to consider the least restrictive environment by not discussing a continuum of placements. Student does not identify the IEP team meeting or meetings at which the least restrictive environment was allegedly not discussed. It is also unclear how this claim is different from Issue 1k, in which Student alleges that Lake Tahoe did not consider the continuum of placements. Issue 1v is insufficient.

Student alleges at Issue 1w that Lake Tahoe failed to make a clear written offer of FAPE. Student does not identify the IEP or IEPs which he contends were not clearly written, resulting in a vague lack of specificity. Issue 1w is insufficient.

Student alleges at Issue 1x that Lake Tahoe failed to maintain records measuring Student's progress on goals in his IEP. Student does not identify the IEP or IEPs for which records of progress on goals were not kept, resulting in a vague lack of specificity. Issue 1x is insufficient.

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).) Student requests among his resolutions that OAH award declaratory relief, attorney's fees, take action to make sure that Student's rights are fully protected in the future, disband Lake Tahoe's SELPA, and order Lake Tahoe to modify all restraint and seclusion

reports sent to the California Department of Education including one from the 2019-2020 school year. OAH does not have jurisdiction to award any of those remedies, and they are not well-defined. OAH can award that Parent be reimbursed for educationally related expenses, independent educational evaluations, and district-wide training. OAH can also order Lake Tahoe to convene an IEP team meeting to make an offer of FAPE in conformance with the Decision after due process hearing.

Student alleges his claims with broad language, over broad periods of time, without specificity as to the IEP or IEPs, or IEP team meeting or meetings, at issue. This is particularly confusing when Student alleges multiple claims regarding placement, goals, and assessments. More specificity is required.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: 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. Student's complaint is insufficiently pled under title 20 United States Code section1415(c)(2)(D), as to all claims, including Issues 1a through 1x.
2. Student will 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 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings