BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

RINCON VALLEY UNION ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2023110433

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY INSUFFICIENT

DECEMBER 1, 2023

On November 14, 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 Rincon Valley Union Elementary School District. On November 29, 2023, Rincon Valley Union filed a timely 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 contains 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, 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.)

Student raises ten claims listed under eight issues in her complaint, some of which are sufficient and some of which are insufficient. The issues are discussed below.

Rincon Valley Union contends Issues 1 through 5, and Issues 7 and 8, are insufficient because the complaint fails to identify the individualized education programs, called an IEP, at issue. However, a complaint need only identify the period of the alleged violation, such as the dates of IEP team meetings, to be sufficient, and the operative IEP or IEPs during that period are not required to be specifically listed to meet the sufficiency requirements.

Student's first two claims, identified in the complaint as Issues 1a and 1b, allege Rincon Valley Union failed to offer more occupational therapy services and speech and language services following the IEP team meeting on May 31, 2023. The complaint sufficiently describes the alleged failure by Rincon Valley Union to offer Student more occupational therapy services and speech and language services at the May 31, 2023 IEP team meeting, to provide Rincon Valley Union with an awareness and understanding of Student's claims in Issues 1a and 1b, to permit Rincon Valley Union to prepare for a resolution session and hearing. Accordingly, Issues 1a and 1b as described in this Order are sufficient.

Issue 2 of the complaint alleges the IEP team met several times following Student's enrollment in Rincon Valley Union on January 24, 2023. Student contends in Issue 2, Rincon Valley Union did not offer Student adapted physical education services following several IEP team meetings, and Rincon Valley Union did not offer adapted physical education services to Student until May 3, 2023. The complaint alleges Rincon Valley Union's failure to offer Student adapted physical education services prior to May 3, 2023, denied her a free appropriate public education, called a FAPE.

The complaint sufficiently describes the alleged failure by Rincon Valley Union to offer Student adapted physical education services prior to May 3, 2023, to provide Rincon Valley Union with an awareness and understanding of Student's claim in Issue 2, to permit Rincon Valley Union to prepare for a resolution session and hearing. Accordingly, Issue 2 as described in this Order is sufficient.

Issue 3 is insufficiently plead because it is confusing. Issue 3 of the complaint alleges no accommodations were noted in the IEP documents dated February 24, 2023, March 8, 2023, and May 3, 2023. Student's IEP team added accommodations to the IEP document on May 31, 2023. The complaint alleges the IEP document dated May 31, 2023, improperly backdated the start of the accommodations to January 5, 2023, prior to Student's enrollment in Rincon Valley Union.

Issue 3 of the complaint goes on to allege Rincon Valley Union failed to assess the effects of Student's disability to receive a FAPE in the regular classroom and in a special day class, and a failed to offer any accommodations.

The problems described in Issue 3 are confusing, and lack clarity as to what problems Student is seeking to be heard and decided at hearing. It is unclear whether Student is claiming Rincon Valley Union improperly documented the accommodations in the IEP, and offered no accommodations at all, or that the failure occurred only prior to May 31, 2023, or whether Rincon Valley Union offered inadequate accommodations. Student also fails to describe how the alleged failure to assess the effects of Student's disability to receive a FAPE in the general education and special education settings is related to the problems involving the accommodations.

Issue 3 of the complaint fails to sufficiently describe Rincon Valley Union's alleged failure to assess Student or offer Student accommodations. Issue 3 is confusing and

fails to provide Rincon Valley Union with an awareness and understanding of Student's claim in Issue 3, to permit Rincon Valley Union to prepare for a resolution session and hearing. Accordingly, Issue 3 is insufficient.

Issue 4 of the complaint raises two claims, identified as Issue 4a and 4b. Issue 4a alleges Rincon Valley Union, for the remaining period of the 2022-2023 school year, failed to assess whether Student qualified for special education under the category of other health impairment as part of the March 9, 2023 psychoeducational assessment. Issue 4b alleges a failure to assess Student for a specific learning disability during the 2022-2023 school year. Rincon Valley Union contends Issues 4a and 4b is unclear because the complaint fails to specifically identify the remaining period of the 2022-2023 school year.

A liberal reading of the complaint demonstrates that Issue 4 is sufficiently plead. According to the complaint, Student did not enroll in Rincon Valley Union until January 24, 2023. The remaining period of the 2022-2023 school year in which Rincon Valley Union was responsible for assessing Student began when Student enrolled in Rincon Valley Union on January 24, 2023. Issues 4a and 4b describes enough information to provide Rincon Valley Union with an awareness and understanding of Student's claims regarding their alleged failure to assess Student for other health impairment and a specific learning disability from January 24, 2023, through the end of the 2022-2023 school year. The complaint provides Rincon Valley Union sufficient information to participate in a resolution session and to prepare for hearing to defend against the claims raised in Issues 4a and 4b. Accordingly, Issues 4a and 4b as described in this Order are sufficient.

Issue 5 alleges Rincon Valley Union failed to find Student eligible for special education services under the category of autism at the March 8, 2023, IEP team meeting.

Issue 5 describes sufficient facts to support that contention. Issue 5 describes enough information to provide Rincon Valley Union with an awareness and understanding of Student's claims regarding the alleged failure to find Student eligible for special education services under the category of autism at the March 8, 2023, IEP team meeting. The complaint provides Rincon Valley Union sufficient information to participate in a resolution session and to prepare for hearing to defend against the claim raised in Issue 5. Accordingly, Issue 5 is sufficient.

Issue 6 is insufficient because it is confusing. The complaint alleges Rincon Valley Union failed to address Student's regression at the March 8, and May 31, 2023, IEP team meetings, and Rincon Valley Union had data about Student's regression as of February 22, 2023. However, the complaint fails to allege sufficient facts about the data that would support that claim, the areas Student regressed in, and how Rincon Valley Union should have addressed the alleged regression at the IEP team meetings.

Issue 6 of the complaint fails to sufficiently describe Rincon Valley Union's alleged failure to address at the March 8, and May 31, 2023, IEP team meetings, Student's alleged regression. Issue 6 is vague, and the complaint fails to state sufficient facts to provide Rincon Valley Union with an awareness and understanding of Student's claim in Issue 6, to permit Rincon Valley Union to prepare for a resolution session and hearing. Accordingly, Issue 6 is insufficient.

Issue 7 alleges Rincon Valley Union failed to offer Parents training in behavior and speech and language at the May 31, 2023, IEP team meeting. The complaint alleges Student had deficits in speech and language and behavior, both at home and at school. Issue 7 provides a sufficient description of the problem to provide Rincon Valley Union with an awareness and understanding of Student's claims regarding the alleged failure to offer Parents training in behavior and speech and language at the May 31, 2023, IEP

team meeting. The complaint provides Rincon Valley Union sufficient information to participate in a resolution session and to prepare for hearing to defend against the claim raised in Issue 7. Accordingly, Issue 7 is sufficient.

Issue 8 of the complaint is sufficiently plead. Student contends in Issue 8 that Rincon Valley Union failed to offer Student in-home applied behavior analysis therapy services and clinic meetings during the 2022-2023 school year. The complaint sufficiently describes the problem regarding Rincon Valley Union's alleged failure to offer clinic meetings during the 2022-2023 school year. At hearing, Student carries the burden of proving what, and how clinic meetings were necessary for Student to receive a FAPE. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.)

The complaint states sufficient facts to provide Rincon Valley Union with an awareness and understanding of Student's claim in Issue 8, to permit Rincon Valley Union to prepare for a resolution session and hearing. Accordingly, Issue 8 is sufficient.

ORDER

1. Issues 1a, 1b, 2, 4a, 4b, 5, 7, and 8 of Student's complaint, and as described in this Order, are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues 3 and 6 of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. 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. Furthermore, if the description of Issues 1a, 1b, 2,

4a, 4b, 5, 7, or 8, in this Order is inconsistent with the claims Student intended to raise in her complaint, Student must file an amended complaint to clarify her claims in Issues 1a, 1b, 2, 4a, 4b, 5, 7, or 8. The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1a, 1b, 2, 4a, 4b, 5, 7, and 8, in Student's complaint, consistent with the findings of this Order.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings