BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2022050981

ORDER OF DETERMINATION OF PARTIAL SUFFICIENCY OF DUE PROCESS COMPLAINT

JUNE 3, 2022

On May 23, 2022, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings naming Dry Creek Joint Elementary School District, referred to as Dry Creek Elementary. On June 2, 2022, Dry Creek Elementary 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).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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

Student's complaint alleges Dry Creek Elementary denied Student a free appropriate public education, known as FAPE, during the 2019-2021 school years, or the 2019-2020, 2020-2021, 2021-2022 school years. The complaint references three individualized education programs developed during this time frame. An individualized education program is called an IEP. Student's complaint does not allege any circumstances to enlarge the statute of limitations and therefore Student's complaint only applies to claims properly pleaded within the two-year statute of limitations. (20 U.S.C. § 1415(b)(6)(B), (f)(3)(C) &(D); 34C.F.R. § 300.507(a)(2); Ed. Code, § 56505, subd. (l).) Student seeks compensatory education for the two-year period before the complaint was filed, which aligns with Student's claims within the two-year statute of limitations.

Student's complaint alleges 28 issues, some of which are sufficient and some which are insufficient. The issues are discussed below.

Issues One alleges Dry Creek Elementary failed to identify, locate and evaluate Student in a timely manner under its child find obligation. Issue One is sufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claim.

With regard to Issue Two, Student alleges Dry Creek Elementary engaged in a practice and pattern of avoiding its obligation to locate students with disabilities within its district. Issue Two does not relate specifically to Student and does not state a claim under the Individuals with Disabilities Education Act, called IDEA. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006).) Therefore, Issue Two is insufficiently pled.

Issue Three alleges Dry Creek Elementary failed to allow Parent meaningful participation in Student's IEP process by refusing to provide Parent information, including assessments, necessary to make informed decisions regarding Student's services, supports, accommodations and placements. Parent alleges she requested an IEP team meeting in January 2020 to discuss concerns about Student's accommodations not being provided, but Dry Creek Elementary did not consider Parent's concerns. Issue Three is sufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claim.

Issue Four alleges Dry Creek Elementary School predetermined Students, "last three IEP [offers] of FAPE." The complaint references an independent educational evaluation conducted in April 2021 and an IEP team meeting held in the fall of 2021 to review the assessment. Issue Four does state the date or dates of the IEPs which Student challenges, explain what was offered by Dry Creek Elementary or state facts explaining how Dry Creek Elementary School predetermined its offers of FAPE. Issue Four fails to provide Dry Creek Elementary School with facts relating to the problem, and therefore is insufficiently pled.

Issue Five alleges Dry Creek Elementary failed to offer Student specially designed instruction to meet Student's unique needs. The complaint alleges Student had difficulties in writing and math. The complaint further alleges Parent believed Student required one-on-one tutoring services. Issue Five is sufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claim.

Issues Six and Sixteen allege Dry Creek Elementary failed to timely assess Student in all areas of suspected disabilities. The only factual assertion included regarding assessments is a conclusory statement Student should have been assessed in the areas of attention deficit hyperactivity disorder, dyslexia, dysgraphia and dyscalculia. Student

did not allege facts indicating what deficits warranted assessing Student in these areas. It also is unclear whether the basis of Student's complaint is an alleged inadequacy of specific assessments Dry Creek Elementary did conduct. Finally, Student does not specifically allege when Dry Creek Elementary should have assessed Student. Therefore, Student has failed to state sufficient facts supporting Issues Six and Sixteen, and the claims are therefore insufficient.

Issues Seven, Eight, Twelve, Fourteen, Eighteen and Twenty-Two allege Dry Creek Elementary failed to determine Student's present levels of performance and develop appropriate baselines and goals. The complaint alleges Student had goals in the areas of reading, reading comprehension, and calculation. The complaint does not identify the date or dates of the IEPs with the purported deficiencies, explain why the present levels of performance were inadequate, state what goals were developed and in which areas, or describe why they goals were inappropriate. Student may correct these deficiencies by identifying the dates of the relevant IEPs, describe why he believes the present levels of performance were inaccurate and areas of need for which Student had goals, and explain why he believes the goals were inappropriate. Issues Seven, Eight, Twelve, Fourteen, Eighteen and Twenty-Two are insufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claims.

Issue Nine alleges Dry Creek Elementary denied Student a FAPE by failing to adequately implement Student's IEP during distance learning. The complaint is confusing because it references three IEPs, but also states Parent did not consent to any IEP. Therefore, it is unclear which IEP should have been implemented during distance learning and during which time periods. Therefore, Issue Nine is insufficiently pled to put Dry Creek Elementary on notice of Student's claim.

Issue Ten alleges Dry Creek Elementary failed to properly consider whether Student was eligible for extended school year. Issue Ten does not state which IEP failed to find Student eligible for extended school year. The complaint also does not state facts describing how Dry Creek Elementary failed to properly consider extended school year. As a result, Issue Ten is insufficiently pled.

Issue Eleven alleges Dry Creek Elementary failed to offer Student "measure benefit" to his education. Issue Eleven does not specify which IEP did not offer Student a FAPE or state facts explaining why the offers were inadequate. Issue Eleven is insufficiently pled to put Dry Creek Elementary on notice of Student's claim.

Issue Thirteen alleges Dry Creek Elementary failed to provide Parent with prior written notice in response to requests by Parent for testing, assessments, services and supports. The complaint fails to identify which IEP or request for information and the corresponding dates required prior written notice. Issue Thirteen is insufficiently pled to put Dry Creek Elementary on notice of Student's claim.

Issues Seventeen and Twenty-Six allege Dry Creek Elementary failed to discuss with Parent the continuum of placement options. The complaint fails to identify the specific IEP team meeting or meetings in which the continuum of placement options were not discussed. Issues Seventeen and Twenty-Six are insufficiently pled to put Dry Creek Elementary on notice of Student's claim.

Issue Nineteen alleges Dry Creek Elementary failed to train Parent and Student on Student's assistive technology devices. Issue Twenty is sufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claim.

Issue Twenty alleges Dry Creek Elementary failed to offer Student appropriate services, supports and accommodations for his attention deficits. Issue 20 does not

identify the specific IEP which Student contends failed to offer Student appropriate services, supports and accommodations for his attention deficit or explain why Student believes the offer was inappropriate. Issue Twenty is insufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claim.

Issue Twenty-Four alleges Dry Creek Elementary failed to classify Student as having secondary disabilities. The complaint alleges Student was eligible for special education under the category of specific learning disability but contends he also should have been identified as having dyslexia or dysgraphia. Issue Twenty-Four is sufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claim.

Issue Twenty-One alleges a district representative improperly required Student to select an independent evaluator from the school district's list of approved evaluators. Issue Twenty-One is sufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claim as to not permitting Parents to choose an independent assessor.

Issue Twenty-Three alleges Dry Creek Elementary failed to have all necessary personnel attend Student's IEP team meetings. The complaint does not allege which IEP team meeting or meetings lacked all required or personnel or identify which team members did not attend. Issue Twenty-Three is insufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claim.

Issues Fifteen and Twenty-Five allege Dry Creek Elementary failed to find Student had attention deficit disorder and dyslexia and to find him eligible for special education under California law. The complaint alleges Student is eligible for special education under the category of specific learning disability. Issues Fifteen and Twenty-Five are sufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claims.

Issue Twenty-Seven alleges Dry Creek Elementary failed to maintain Student's placement during the two-year period before the complaint was filed. The complaint alleges Dry Creek Elementary changed the frequency and duration of Student's services and supports without Parent's consent. The complaint does not allege which services and supports were changed without Parent's consent, or when these changes were allegedly made. Issue Twenty-Seven is insufficiently pled to put Dry Creek Elementary on notice as to the basis of Student's claim.

Issue Twenty-Eight references statements on Dry Creek Elementary School's website about its special education services. Issue Twenty-Eight does not relate specifically to Student or state facts showing he was not properly identified, evaluated or placed, or denied a FAPE. Therefore, Issue Twenty-Eight is insufficiently pled.

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.) Parent is encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues 1, 3, 5, 15, 19, 21, 24 and 25 are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues 2, 4, 6 through 14, 16, 17, 18, 20, 22, 23, 26, 27 and 28 are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Students 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 U.S.C. section 1415(b)(7)(A)(ii), and shall 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 3, 5, 15, 19, 21, 24 and 25 in Student's complaint.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings