BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FOLSOM-CORDOVA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024110041

ORDER DETERMINING DUE PROCESS COMPLAINT INSUFFICIENT

NOVEMBER 21, 2024

On October 31, 2024, Parent on behalf of Student filed a Due Process Hearing Request with the Office of Administrative Hearings, called OAH, naming Folsom-Cordova Unified School District. A Due Process Hearing Request is called a complaint.

On November 15, 2024, Folsom-Cordova Unified filed a timely Notice of Insufficiency as to the complaint. Folsom-Cordova Unified contends the complaint is insufficient because it fails to identify the period of the alleged violations, or the individualized education program, called IEP, Student is challenging.

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; *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 46,540-46,541, 46,699.)

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) Education Code section 56505, subdivision (l) provides as follows: "A request for due process hearing arising under subdivision (a) of Section 56501 shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. In accordance with Section 1415(f)(3)(D) of title 20 of the United States Code, the time period specified in this subdivision does not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following:

1. Specific misrepresentation by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or
2. The withholding of information by the local educational agency from the parent that was required under this part to be provided to the parent."

Student's complaint does not raise an exception to the two-years statute of limitations. Therefore, a fair and liberal reading of the complaint established that Student's claims are limited to October 31, 2022, through October 31, 2024.

Student's complaint raises five primary Issues, all of which are insufficiently plead. Issue 1 claims Folsom-Cordova Unified failed its child find obligations by failing to provide Student with all appropriate assessments and find him eligible for special education services. Issue 1 is vague and unclear to when Folsom-Cordova Unified

allegedly failed to provide Student will all appropriate assessments. The complaint describes numerous assessments conducted by Folsom-Cordova Unified during the 2022-2023 and 2023-2024 school years. The complaint is unclear as to what assessments, and when, Folsom-Cordova Unified should have provided Student to meet its child find obligations. Accordingly, Issue 1 is insufficient.

Issues 2a, 2b, 2c, and 2d allege Folsom-Cordova Unified failed to timely and appropriately assess Student in psychoeducation, speech and language, functional behavior, and occupational therapy. Issues 2a through 2d are vague and unclear.

Regarding Issue 2a, Folsom-Cordova Unified conducted a psychoeducational assessment which Student's IEP team reviewed on October 25, 2022. Though the complaint describes the assessment report as a "copy and paste job", the complaint fails to describe how the assessment was untimely or how any other aspect of the assessment was inappropriate. The complaint also fails to specify whether Issue 2a is limited to the completed psychoeducational assessment, or also includes additional assessments that Folsom-Cordova Unified failed to conduct during the relevant period.

Regarding Issue 2b, Folsom-Cordova Unified conducted a speech and language assessment, with an assessment report dated April 17, 2023. However, the complaint fails to describe how the speech and language assessment was inappropriate or untimely. The complaint also fails to identify a period as to when any additional speech and language assessment should have been offered.

Issue 2c claims Folsom-Cordova Unified failed to timely and appropriately assess the function of Student's behaviors. The complaint describes Parent's request for a publicly funded independent functional behavior assessment at the August 23, 2024 IEP

team meeting. However, the complaint fails to describe the period that Folsom-Cordova Unified failed to offer a functional behavior assessment.

In Issue 2d, Folsom-Cordova Unified conducted an occupational therapy assessment, with an assessment report dated April 17, 2023. Folsom-Cordova Unified also conducted an additional occupational therapy assessment in the fall 2023. The complaint fails to describe how the two occupational therapy assessments were inappropriate or untimely. The complaint also fails to describe how and when Folsom-Cordova Unified allegedly failed to timely and appropriately assess Student in occupational therapy aside from the two occupational therapy assessments described.

In sum, Issues 2a through 2d are vague and the complaint fails to provide Folsom-Cordova Unified with an awareness and understanding of the claims in those Issues. Accordingly, Issues 2a, 2b, 2c, and 2d are insufficiently plead.

Issues 3a through 3f are also insufficiently pled because the complaint fails to describe the period or IEP's that Folsom-Cordova Unified allegedly failed to timely and appropriately address Student's needs in intensive academic instruction, behavioral and emotional supports, occupational therapy, speech and language, counseling, and intensive individual services. For example, the complaint claims Folsom-Cordova Unified failed to offer occupational therapy services following the October 25, 2023, IEP team meeting. However, Folsom-Cordova Unified offered an occupational therapy goal and 30 minutes weekly occupational therapy services in the December 13, 2023 IEP. The complaint is unclear whether Student is also challenging the offer of occupational therapy services in the December 13, 2023 IEP because the complaint fails to describe any problems with the December 13, 2023 IEP's offer to address Student's needs in occupational therapy.

Similarly, the complaint fails to identify the period or the IEP's Folsom-Cordova Unified allegedly failed to address Student's needs in speech and language. For example, the October 25, 2023, IEP did not offer a goal in speech or language, or offer speech and language services. The complaint is unclear whether Student is alleging the October 25, 2023, IEP failed to address Student's needs in speech and language because the complaint does not describe a problem with the IEP in that regard. The complaint is also unclear with respect to the December 13, 2023, IEP, and any subsequent IEP during the relevant period regarding speech and language needs.

The complaint also lacks sufficiency and clarity regarding the period Folsom-Cordova Unified allegedly failed to address other areas of suspected need in intensive academic instruction, behavioral and emotional supports, counseling, and intensive individual services. In sum, Issue 3a through 3f are vague and the complaint fails to provide Folsom-Cordova Unified with an awareness and understanding of the claims in those Issues. Accordingly, Issues 3a, 3b, 3c, 3d, 3e, and 3f are insufficiently plead.

Issue 4 claims Folsom-Cordova Unified failed to provide Student with an education in the least restrictive environment. The complaint describes Parent's objection to placement in the moderate kindergarten-to-fifth grade special day class for the 2024-2025 school year. However, Issue 4 is vague because it is unclear whether Student also seeks to challenge other periods or IEP's, regarding Folsom-Cordova Unified's alleged failure to offer Student an education program in the least restrictive environment.

The complaint fails to provide Folsom-Cordova Unified with an awareness and understanding of Student's claims in Issue 4. Accordingly, Issue 4 is insufficient.

Issue 5 claims Folsom-Cordova Unified prevented Parent from participating in the IEP decision-making process by failing to provide Parent with material information and failing to address Parent's requests for assessments and other areas of noted concerns. Issue 5 is vague because the complaint fails to describe the period, events, or IEP team meetings that Folsom-Cordova failed to provide Parent with material information or appropriately address Parent's requests and concerns which prevented Parent from meaningfully participating in Student's IEP process. The complaint fails to provide Folsom-Cordova Unified with an awareness and understanding of Student's claims in Issue 5. Accordingly, Issue 5 is insufficient.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code section 1415(c)(2)(D).
2. Student shall 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 no 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.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings