BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT

V.

SALINAS CITY ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2021020657

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

MARCH 09, 2021

On February 18, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Salinas City Elementary School District. On March 5, 2021, Salinas City timely 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).

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 is 17 pages in length and lists six issues. The notice of insufficiency is for Issues One through Three. Student claims in Issues One through Three that Salinas City denied Student a FAPE beyond the two-year statute of limitations. 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. Here, the complaint was filed February 18, 2021. In order to assert claims that precede February 18, 2019, Student must assert facts which could form the basis for piercing the two-year statute.

ISSUES ONE THROUGH THREE ARE SUFFICIENTLY PLED

Issue One asserts that Salinas City denied Student a free appropriate public education, called a FAPE, during the 2016-2017 school year by violating its "child find" duty to locate, identify and assess Student for special education services. In the complaint's summary of facts, Student states facts that allegedly required Salinas City to assess Student. Additionally, the complaint stated Salinas City held an individualized education plan meeting in May 2017 and failed to provide requisite documents and procedural safeguards in the Parents' primary language. Also, when Student was not found eligible for special education, the complaint alleges that Salinas told Parents there was nothing else the school could do for Student. The complaint later specifically refers to these allegations, beginning in May 2017, as the basis for Student's claims that exceed the two-year statute of limitations. Issue One provides sufficient information, including the basis for Student's claims beyond the two-year statute, for Salinas City to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

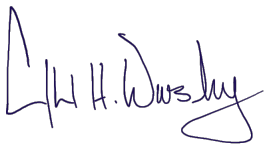
Issue Two merely states that Salinas failed to provide Student with a FAPE during the 2017-2018 school year by failing to evaluate Student for special education services in violation of its "child find" obligations. Though the complaint does not make additional factual assertions regarding the 2017-2018 school year, the complaint as a whole sufficiently sets forth Student's alleged deficiencies beginning before, and continuing after, this school year. Also, the complaint clearly stated the basis for why Student should be allowed to pursue claims beyond the two-year statute, beginning in May 2017. The facts alleged in Student's Issue Two are sufficient. Issue Two identifies the issue and the complaint provides adequate facts about the problem to permit Salinas City to respond and participate in a resolution session and mediation.

Issue Three of the complaint alleges seven separate reasons why Salinas City denied Student a FAPE for the 2018-2019 school year. Subpart (a) of Issue Three again asserts that Salinas City violated its "child find" duties in not evaluating and holding an individualized education plan meeting before May 21, 2019. A portion of the school year precedes the two-year statute cut-off date of February 18, 2019. The complaint sufficiently pled Student's basis for the tolling of the two-year statute, beginning in May of 2017, and Student need not plead additional grounds for piercing the two-year limitation. Subparts (b) through (g) assert that Salinas City failed to adequately assess Student and failed to provide an adequate individualized education plan at the May 2019 meeting. The complaint asserts the factual basis for each of the subparts' assertions in the body of the complaint. The facts alleged in Student's Issue Three are sufficient. Issue Three identifies the issues and the complaint provides adequate facts about the problem to permit Salinas City to respond and participate in a resolution session and mediation.

ORDER

1. The complaint is deemed sufficient under title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).
2. The prehearing conference and hearing dates in this matter are confirmed.

IT IS SO ORDERED.



Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings