BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2022090454

ORDER OF DETERMINATION OF PARTIAL SUFFICIENCY OF DUE PROCESS COMPLAINT

SEPTEMBER 29, 2022

On September 14, 2022, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Dry Creek Joint Elementary School District. On September 22, 2022, Dry Creek filed a Notice of Insufficiency as to the complaint. Student had previously filed for Due Process and ultimately withdrew his complaint. This determination of sufficiency is made independent of Student's previous filing.

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 he was denied a free appropriate public education, called FAPE, from 2019 through 2021. This would include the 2019-2020, 2020-2021, and 2021-2022 school years. Student is seeking compensatory education for the past two years. Student's complaint provides no facts or circumstances to support Student is attempting to extend the 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).) Accordingly, to the extent issues pled exceed the two year statute of limitations, they are deemed insufficiently pled.

Student's complaint alleges 27 issues, keeping in mind the liberal pleading standard, some are sufficiently pled, some are not.

Issue 1 alleges Dry Creek failed its Child Find obligation to identify, locate and evaluate Student. Issue One is sufficiently pled as it provides Dry Creek enough information to understand the issues forming the basis of the complaint and participate in resolution session and mediation.

Issue 2 alleges Dry Creek exhibited a pattern and practice of deliberately failing its Child Find obligation toward other children. As pled, Issue Two fails to state a claim

under the Individuals with Disabilities Education Act, called the IDEA. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006).) Therefore, Issue Two is insufficiently pled.

Issue 3 alleges Dry Creek failed to allow Parent to meaningfully participate in Student's IEP team meetings. Parent alleges she contacted Dry Creek in January 2020 and requested an IEP team meeting and those concerns were never addressed by Dry Creek. Parent's allegations are in conflict with her factual support. Issue Three is insufficiently pled to put Dry Creek on notice of the basis of the complaint.

Issue 4 alleges Dry Creek predetermined the outcome of Student's last three IEP team meetings. This issue is sufficiently pled.

Issue 5 alleges Dry Creek failed to offer student specific instruction designed to meet his unique needs. This issue is sufficiently pled.

Issue 6 alleges Dry Creek failed to offer Student appropriate testing, assessment, and evaluation. Parent alleges Dry Creek failed to entertain the possibility Student may have dysgraphia, dyscalculia, dyslexia, or ADHD. Dry Creek has sufficient information to participate in resolution session and mediation. This issue is sufficiently pled.

Issue 7 alleges Dry Creek failed to make an appropriate offer of FAPE including accurate present levels, goals, and objectives. Dry Creek has sufficient information to participate in resolution session and mediation. Dry Creek is on notice of the time period and areas of dispute, namely two years prior to the date of filing. This issue is sufficiently pled.

Issue 8 alleges Dry Creek failed to offer appropriate baselines. Like Issue Seven, *supra,* this issue is sufficiently pled.

Issue 9 alleges Dry Creek failed to provide Student a FAPE by changing Student's educational program to distance learning from November 2019. It is unclear from Student's complaint if Student's educational program was transferred to distance learning in November of 2019 as a result of COVID-19. Thus, this issue is unclear and fails to provide Dry Creek a sufficient understanding of the basis of the complaint.

Issue 10 alleges Dry Creek unilaterally determined Student was not eligible for Extended School Year. Dry Creek has sufficient information to participate in resolution session and mediation. Dry Creek is on notice of the time period and areas of dispute. This issue is sufficiently pled.

Issue 11 alleges Dry Creek failed to offer Student any measurable benefits. Student, again, fails to provide any factual information other than Parent's ongoing refusal to consent to the IEP. This issue is insufficiently pled.

Issue 12 alleges Dry Creek failed to offer parent adequate progress reports of Student's IEP goals. Dry Creek has sufficient information to participate in resolution session and mediation. Dry Creek is on notice of the time period and areas of dispute. This issue is sufficiently pled.

Issue 13 alleges Dry Creek failed to provide appropriate Prior Written Notices for all substantive requests. Dry Creek has sufficient information to participate in resolution session and mediation. The issue is sufficiently pled.

Issue 14 alleges Dry Creek failed to provide timely and appropriate baselines and goals. Student does challenge Student's progress report of September 17, 2021. The issue, while inelegant, does meet the liberal pleading standards to allow Dry Creek to participate in resolution session and mediation. This issue is sufficiently pled.

Issue 15 alleges Dry Creek failed to find Student eligible for special education services in the category of Attention Deficit and Dyslexia. Dry Creek has sufficient information to participate in resolution session and mediation. The issue is sufficiently pled.

Issue 16 alleges Dry Creek failed to assess in all areas of suspected disability. Student provided sufficient information to put Dry Creek on notice of the basis of Student's complaint. This issue is duplicative of issue 6 and to the extent Student was alleging a different issue it is insufficiently pled.

Issue 17 alleges Dry Creek failed to discuss and deliberate at three separate IEP team meetings a continuum of placement options. Dry Creek has sufficient information to understand the issues forming the basis of this complaint. Dry Creek is on notice of the time period and areas of dispute. This issue is sufficiently pled.

Issue 18 alleges Dry Creek failed to offer Student appropriate baselines and goals for reading, writing, and calculation. Student alleges Dry Creek's failure was the result of "ham-handed fraud." This issue is duplicative of issues 7 and 8 and to the extent Student was alleging a different issue it is insufficiently pled

Issue 19 alleges Dry Creek failed to train Student and Parent on their assistive technology devices. This issue provides Dry Creek with sufficient factual information to participate in the resolution session and mediation. This issue is sufficiently pled.

Issue 20 alleges Dry Creek failed to offer appropriate services, supports, and accommodations for his attention deficits which were obvious to all. This issue is duplicative of previously pled issues. To the extend Student was alleging a different issue it is insufficiently pled.

Issue 21 alleges Dry Creek failed to tell Parent that Parent was free to select any independent educational expert she desired. This issue is sufficiently pled.

Issue 22 alleges Dry Creek failed to revise Student's goals. Again, this issue is duplicative. To the extend Student was alleging a different issue it is insufficiently pled

Issue 23 alleges Dry Creek failed to have the appropriate personnel at the IEP team meetings. Student referenced "incestuous relationship" between the assessor and Dry Creek. While this factual statement is unclear, the issue itself, namely that not all required IEP team participants were present at IEP team meetings is sufficient to put Dry Creek on notice to participate in the resolution session and mediation. This claim is sufficiently pled.

Issue 24 alleges Dry Creek failed to find Student eligible for a secondary disability. Student alleges Dry Creek should have considered dyslexia or dysgraphia as a secondary eligibility category. This is sufficient to put Dry Creek on notice of the basis of Student's complaint.

Issue 25 alleges Dry Creek failed to find Student eligible for special education. Dry Creek has sufficient information to understand the basis of Student's complaint.

Issue 26 is a repeat of issue Seventeen. To the extend Student was alleging a different issue it is insufficiently pled

Issue 27 alleges Dry Creek failed to maintain the agreed upon placement over the past two years. This issue is unclear what Student is alleging. It is insufficiently pled.

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. Issues 1, 3 through 8, 10, 12 through 15, 17, 19, 21, 23 through 25 are of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues 2, 3, 9, 11, 16, 18, 20, 22, 26, and 27 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 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 through 8, 10, 12 through 15, 17, 19, 21, 23 through 25 of Student's complaint.

IT IS SO ORDERED.

Tiffany Gilmartin
Tiffany Gilmartin (Sep 29, 2022 16:50 PDT)

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings