BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

VACAVILLE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024020147

# ORDER DETERMINING DUE PROCESS COMPLAINT SUFFICIENT

MAY 31, 2024

On February 5, 2024, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Vacaville Unified School District. On May 13, 2024, OAH granted Student's request for leave to file an amended complaint, deeming it filed on that date. On May 28, 2024, Vacaville timely filed a Notice of Insufficiency as to the amended complaint, referred to below as the complaint within 15 days of receiving the complaint. (20 U.S.C. § 1415(c)(2)(C).)

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 Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Board* (M.D.Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Board 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 46540-46541, 46699.)

Vacaville contends that Student insufficiently pled Issues 3, 5, 8, 10, and 11, of the 12 issues alleged in his complaint.

In Issue 3, Student alleges that Vacaville failed to provide necessary mental health and/or counseling services to Student. Student explains that Vacaville knew of Student's reports of bullying and inappropriate treatment by staff and knew his Parents obtained counseling to address mental health and/or emotional issues and behaviors resulting from such treatment. Student's complaint described the following:

1. an incident with an occupational therapist that occurred in 2020 before COVID-19, during in-person learning, at page 6;
2. bullying by staff beginning with evaluations being conducted by Vacaville in the fall of 2021, at page 5;
3. being choked by a classmate in fall of 2021, at page 7;
4. Parents taking Student to mental health and/or therapy services in August 2021, at page 7;
5. failing to have appropriate staff with Student during assessments, in March 2022, at page 9; and
6. failing to address mental health needs at the January 28, 2022 IEP team meeting through Student's enrollment in a charter school in August 2022, at pages 10-11.

Student's complaint provides additional allegations between and after the events identified above. Though some events arose outside of the two-year statute of

limitations, the request for services to address the impact of the events falls within the statute of limitations, simply looking at the face of the complaint, and without making any evidentiary findings in this regard.

Vacaville's argument that the complaint fails to identify specific IEPs at issue lacks merit. Student alleges Vacaville failed to address his mental health/counseling needs in any IEP after these events arose, which means in all the IEPs developed during the statutory period. Issue 3 pertains to a failure to address the identified needs in any IEP, not the failure to appropriately address a need in a particular IEP. Vacaville held the IEPs, can review them, and determine how many IEPs were held during the time period covered by Issue 3. Any further clarification can be made during the prehearing conference in this matter, should the administrative law judge clarifying the issues deem that necessary. Student pled facts sufficient to support the claim and provide Vacaville with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation regarding Issue 3.

In Issue 5, Student alleges Vacaville terminated speech and language services without Parent's consent. Student alleges knowing the services were terminated after hiring an advocate and within the two-year statutory period. The only other reference to termination of speech and language appears on page 7 of the complaint, after referring to mental health services obtained by Parents for Student in August 2021. Student fails to allege when Parents discovered the termination of speech and language services, whether Vacaville terminated services through an IEP, whether Vacaville simply chose to discontinue services, or any other facts relating to the claim. Nonetheless, Vacaville can ascertain if and when speech services were discontinued by reviewing their IEPs, assessments, and/or service logs. The allegations supporting Student's Issue 5

sufficiently support the claim and provide Vacaville with sufficient information to know how to prepare for hearing and participate in resolution session and mediation.

In Issue 8, Student alleges Vacaville failed to offer a free appropriate public education, called a FAPE, that addressed his unique educational needs within the period at issue. Student alleges that the independent educational evaluations by Dr. Carina Grandison in psychoeducation, by Liz Oson in speech and language, and by Deb McCloskey in occupational therapy, identified needs that were not found or addressed by Vacaville. Student described specific areas of need found by the independent assessors both within Issue 8 and on pages 13 through 14 of the complaint. Student alleged needs in the areas of academics, including reading and writing, behavior, fear and anxiety, and speech and language, including social pragmatic challenges. The complaint also outlines some recommendations made by the assessors. Accordingly, the allegations supporting Student's Issue 8 sufficiently support the claim and provide Vacaville with sufficient information to know how to prepare for hearing and participate in resolution session and mediation.

In Issue 11, Student alleges Vacaville failed to provide requested educational records in response to Parents' written requests. Student alleges such requests were made during the "past two years" and that Parents were entitled to receive copies of records, including the incident report from 2020 when Student was locked in a room by his occupational therapist and observations notes taken by Vacaville staff when Aumrey Moland brought five staff members into a room to observe Student's assessment. Student alleges that Parents agreed to have the staff members present during assessment if Vacaville agreed to provide the notes taken by observers, afterwards. The observations were related to triennial assessments being conducted during the 2021-

2022 school year and which Vacaville advised Parents it could not complete in March 2022. (See pages 9-10 of the complaint.)

Vacaville argues that Student pled the issue insufficiently by not identifying all records requested and by failing to state the date Parents made the requests. Such specificity, though helpful and appropriate at the pleading stage, is not legally required in notice pleading. The allegations surrounding Student's Issue 11 support the claim and provide Vacaville with sufficient information to know how to prepare for hearing and participate in resolution session and mediation.

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings