BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

VALLEJO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024060702

ORDER DETERMINING FIRST AMENDED DUE PROCESS COMPLAINT PARTIALLY SUFFICIENT AND PARTIALLY INSUFFICIENT, AND ORDER DISMISSING ISSUE 9, SUA SPONTE

AUGUST 06, 2024

On June 19, 2024, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Vallejo City Unified School District, called Vallejo. On July 2, 2024, Vallejo filed a notice of insufficiency as to the complaint. On July 3, 2024, OAH issued an Order determining Student's complaint to be partially sufficient and partially insufficient. Student was given 14 days within which to file an amended complaint, to address the insufficiencies.

On July 16, 2024, Student filed a First Amended Due Process Complaint. On July 31, 2024, Vallejo file a notice of insufficiency as to Student's amended 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, called a FAPE; (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 and 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.)

STATUTE OF LIMITATIONS

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).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (*l*), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action. That is, the claim accrues when the parent knows that the education provided is inadequate, and not when the parent understands a claim occurred. (*M.M. & E.M. v. Lafayette School Dist*. (N.D.Cal., Feb. 7, 2012 Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, ** 17 – 19, affd.in part and revd. in part on other grounds by *M.M. v. Lafayette School Dist.*, et al (9th Cir. 2014) 767 F.3d 842, 859.)

It does not matter if the parent understood that the inadequacy was a legal claim, what is material is the fact that the parent had knowledge of the problem. Congress intended to obtain timely and appropriate education for special-needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Student v. Brea Olinda Unified School Dist*. OAH Case No. 2009050815, quoting *Alexopulous v. San Francisco Unified School Dist*. (9th Cir. 1987) 817 F.2d 551, 555.)

Student's complaint was filed on June 19, 2024. Claims arising before June 19, 2022, or during the 2021-2022 school year, are barred unless an exception to the statute of limitations applies.

The complaint alleges Parent made requests for Student to be assessed in 2021-2022, indicating Parent knew or should have known Student had unidentified and unaddressed educational needs at that time. Therefore, Student's claims accrued for the purposes of the statute of limitations, well before June 19, 2022.

To toll the statute of limitations, the amended complaint needs allege facts that support Student's claim to entitlement to at least one of the two statutory exceptions. In a separate section, entitled Statute of Limitations, the amended complaint makes allegations, in support of claims predating the statute of limitations, including:

- Vallejo misrepresented to Parents Student could only receive special education services in Vallejo and did not have any other placement offers,
- Vallejo withheld records and information from Parent to force her to feel Vallejo was the only placement for Student,
- Vallejo's assessments inaccurately suggested improvement in Student's performance,
- Vallejo failed to comprehensively assess Student in the 2021-2022 school year although Student was not making progress on his IEP, depriving Parent of knowledge about Student's actual performance,
- Vallejo failed to comply with statutory timelines,

- Vallejo withheld information on an appropriate program, services, and placement for Student, and

- Parent reasonably relied on Vallejo's misrepresentations and did not know the basis of her claims until Parent retained an attorney.

In the statement of facts section of the complaint, for the 2021-2022 school year, the complaint alleges that Vallejo failed to provide speech services for one-half of the school year, did not offer speech services for the 2022 extended school year, changed services without Parent's consent, failed to communicate with Parent, and did not perform an assistive technology assessment. Student alleges Parent's concerns about Vallejo's shortcomings were ignored by the April 26, 2022 IEP team. The amended complaint added allegations (see Issue 4) regarding claims predating the statute of limitations, saying that Vallejo's program in 2021-2022, which allegedly did not meet Student's needs, were misrepresentations that caused Student not to pursue a due process claim.

Parent is claiming in the amended complaint that these assertions entitle Student to the tolling of the statute of limitations pursuant to the two statutory exceptions. Whether these allegations are factually true and prevented Student from filing a request for due process because of specific misrepresentations by Vallejo, or that it withheld information from Parent that was required to be provided to Parent before June 19, 2022, requires a legal finding following an evidentiary hearing. For purposes of this notice of insufficiency, though, the amended complaint's allegations sufficiently provides Vallejo with the basis for Student's claim that the statute of limitations was tolled, pursuant to the statutory exceptions. The amended complaint provides Vallejo with sufficient information to prepare for the hearing and how to participate in

resolution sessions and mediation, regarding the statute of limitations. Allegations regarding claims predating June 19, 2022, are sufficient.

ANALYSIS OF ISSUES

At Issue 1, Student's amended complaint alleges Vallejo failed to produce a complete set of Student's educational records for the 2023-2024 school year at Parent's request. This is enough information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 1. Issue 1 is sufficient.

At Issue 2, the amended complaint alleges that Vallejo failed to timely assess Student in all areas of suspected disability, or to provide prior written notice of its denial of Parent's requests for assessment in the 2021-2022, 2022-2023, and 2023-2024 school years. At Issue 2, Student alleges specific unidentified needs that prevented Student from accessing his education, and the specific assessments Student contends should have been completed. The complaint alleges sufficient information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 2.

At Issue 3, the amended complaint alleges that Vallejo failed to timely hold an IEP team meeting for Student's transition into Vallejo in August 2021, and convened a late IEP team meeting for the annual review of Student's IEP in May 2024. The amended Issue 3 asserts that Vallejo's failure to hold a 30-day or transition IEP, when Student entered the district in August 2021, denied Parent the opportunity to know how Student's prior IEP would be implemented. The amended complaint alleges sufficient information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 3.

At Issue 4, the amended complaint makes vague and conclusory allegations that Vallejo failed to deliver and implement Student's IEPs during the 2021-2022, 2022-2023,

and 2023-2024 school years. Issue 4 does not allege additional facts, instead stating Vallejo failed to implement Student's IEP "as pled throughout this complaint." The amended complaint's Issue 4 asserts that Vallejo's position, that it provided services, was a misrepresentation justifying a wavier of the statute of limitations. The amended complaint does not elsewhere allege any specific facts about a failure to implement Student's IEPs in the 2022-2023 and 2023-2024 school years. In the opening review of facts, Student provided some background for the 2021-2022 school year, but this period predates the statute of limitations, for which insufficient facts are pled to support an exception.

Student vaguely alleges that his teacher did not follow the November 1, 2023 IEP but does not allege how or when the teacher failed to implement the IEP. Student vaguely alleges Vallejo sporadically provided services and did not work on goals, but does not specify which services or goals were not implemented or when these failures occurred. The first amended complaint's Issue 4 allegations do not sufficiently inform Vallego regarding implementation of Student's IEPs. The amended complaint must provide Vallejo with sufficient information, so it knows how to prepare for the hearing and how to participate in a resolution session and mediation on each claim. Issue 4 is insufficient.

At Issue 5, the amended complaint alleges that Vallejo failed to timely convene an IEP team meeting upon Parent's request on September 14, 2023. These facts are sufficient to give Vallejo an awareness and understanding of the issue forming the basis of Issue 5. Issue 5 is sufficient.

At Issue 6, the amended complaint alleges that the IEP teams ignored Parent's input during the 2021-2022, 2022-2023, and 2023-2024 school years. The amended complaint alleges the specific facts regarding input Parent provided at each IEP team

meeting, and that Vallejo unilaterally determined Student's educational program without meaningfully engaging Parent in the IEP process. The amended complaint alleges sufficient information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 6.

At Issue 7, the amended complaint alleges that Vallejo denied him a FAPE during the 2021-2022, 2022-2023, and 2023-2024 school years because Student did not make more than minimal progress and regressed academically. The amended complaint clearly alleges that Student did not make progress on his IEP goals each year and failed to make one year of progress in academics for each year in school. The amended complaint alleges sufficient information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 7.

At Issue 8, the amended complaint alleges that Vallejo denied Student a FAPE by not addressing Student's autism, attention deficit hyperactivity disorder, called ADHD, and anxiety needs by offering him an appropriate program in the 2021-2022, 2022-2023, and 2023-2024 school years. Specifically, the amended complaint alleges that Student's records and Parent report indicated that anxiety was an area of suspected disability and Student needed accommodations for his mental health, in addition to behavioral and speech services addressing anxiety, autism, and ADHD. Here, Student is specific in identifying services that should have been offered. The amended complaint alleges sufficient information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 8.

At Issue 9, the amended complaint alleges that Vallejo's actions violated Student's rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Americans with Disability Act (42 U.S.C. §§ 12101, et seq.), Title VI, and other civil rights statutes. A party has the right to present a complaint with respect to any

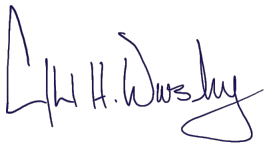
matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a)), and the jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to decide the claims alleged at the Issue 9. The amended complaint's Issue 9 Therefore, Issue 9 of the amended complaint is hereby dismissed.

ORDER

1. Issues 1, 2, 3, 5, 6, 7 and 8, of the first amended complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 4 of the first amended complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Issue 9 of the first amended complaint asserts claims over which OAH does not have jurisdiction. Issue 9 cannot be amended to bestow jurisdiction over its claims. Therefore, Issue 9 is hereby dismissed in its entirety, *sua sponte*.
4. Student will be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
5. The amended complaint must comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii) and must 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.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2, 3, 5, 6, 7, and 8.

IT IS SO ORDERED.



Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings