BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MILLER CREEK ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2024080380

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY INSUFFICIENT

AUGUST 16, 2024

On August 9, 2024, Parents, on behalf of Student, filed a Due Process Hearing Request, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Miller Creek Elementary School District as respondent. On August 15, 2024, Miller Creek 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 Individuals with Disabilities Education Act, or 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.] 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 46541, 46699.)

Student's complaint alleges seven "contentions," four of which are sufficient and three of which are insufficient. This order will use the word "issue" interchangeably with Student's chosen "contention" as that is the word used by both state and federal law.

when references claims made in special education due process hearing requests. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

CONTENTION NUMBER ONE

Miller Creek asserts Student's issue number one is insufficient because it uses the language "includes but is not limited" in reference to the listed areas Student alleges District failed to "timely assess." In issue number one, Student alleged that Miller Creek failed to timely assess Student in all areas of suspected disabilities, and identified educationally related mental health, speech, and a functional behavior assessment as the assessments not timely completed.

Minimal pleading standards apply to requests for due process pursuant to the Individuals with Disabilities Education Act. (*Schaffer ex rel. Schaffer v. Weast*, (2005) 546 U.S. 49, 54 [126 S.Ct. 528, 163 L.Ed.2d 387].) However, Student is required to give Miller Creek notice of the claims asserted against it. While issue number one uses the words "includes but not limited to" in listing the assessments not timely completed, Student is limited to the claims stated in the complaint. Special Education due process complaints require that Student articulate all claims it is alleging in the complaint. The special education administrative process, unlike some civil lawsuits, does not allow Student to conform the pleading to proof following a hearing. In special education due process hearings, the party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Issue number one has identified the assessments Student claims were not timely. Therefore, Student's Contention number one is sufficient, as it provides Miller Creek with adequate information to prepare for resolution session, mediation and hearing.

CONTENTION NUMBER TWO

Miller Creek asserts that Student's Contention number two is insufficient because it fails to state "which IEP this contention is in reference to" and is vague and confusing because the issue fails to clearly state whether Student is alleging Miller failed to draft a behavior plan at all or failed to draft an "appropriate" behavior intervention plan. Student's issue number two alleges that Miller Creek "failed to draft an appropriate behavior intervention plan during the 2021-2022, 2022-2023 and 2023-2024 school years resulting in a denial of FAPE. Issue number two has identified the school years during which it is alleged an appropriate behavior plan was not offered. If further details about behavior plans during the time periods specified is necessary, clarification can be sought at the prehearing conference. However, as alleged, Student's Contention number two is sufficient, as it provides Miller Creek with adequate information to prepare for resolution session, mediation and hearing.

CONTENTION NUMBER THREE

Miller Creek asserts that Student's issue number three is confusing due to its use of "hostile environment" in relationship to its alleged denial of FAPE. This wording is used only in the issue heading however. The issue itself specifies that this issue alleges a denial of FAPE based on bullying. Miller Creek also claims that the issue is vague because it does not mention IEPs. Not every alleged denial of FAPE is directly associated to an IEP. As alleged, Student's Contention number three is sufficient, as it provides Miller Creek with adequate information to prepare for resolution session, mediation and hearing.

CONTENTION NUMBER FOUR

Miller Creek asserts that Student's Contention number four is insufficient because it fails to identify the denial of FAPE resulting from the allegation that Miller Creek failed to provide Parents with IEP goal progress updates during the 2021-2022, 2022-2023 and 2023-2024 school years. Miller Creek offers no legal authority supporting its assertion that, in order to be sufficient, the allegations were required to include the exact IEPs and goals for which progress reports were not provided. Miller Creek's assertion that the allegation fails to identify a denial of FAPE is not persuasive. This allegation asserts that Parents "continually asked for baselines on his performance and requested meetings to determine why Student was struggling. It asserts "IEP goal updates were imperative to allow Parents to have the data on Student's skills." It then asserts that the information was not provided to either Parent or Student's counsel when requested resulting in a denial of FAPE. The provision of progress reports is required by the IDEA. (34 C.F.R. §300.320 (a)(3)(ii).) As alleged, Student's Contention number four is sufficient, as it provides Miller Creek with adequate information to prepare for resolution session, mediation and hearing.

CONTENTION NUMBER FIVE

Student's issue number five fails to offer adequate detail regarding the claims to be sufficient. Student's issue number five alleges that, during the 2021-2022, 2022-2023 and 2023-2024 school years, Miller Creek failed to comply with Student's operative IEP, denying him a FAPE. In the body of the issue, Student alleges, "Despite his IEPs being inadequate to address his needs in all areas. The services in the areas of speech and occupational therapy services were supposed to offer him some support. Unfortunately, this did not occur. The issue goes on to allege Miller Creek did not consistently have service providers to work with Student, his accommodations were not implemented, his

goals were not implemented and he failed to progress. In addition to being confusing as written due to the sentence fragment at paragraph 133, this issue is actually multiple issues. Miller Creek is not adequately put on notice which goals or accommodations were not implemented from which IEPs, and which services were not implemented due to a lack of providers. If other allegations are intended, they are not clearly stated. Student's Contention number five is insufficient to allow Miller Creek to prepare for resolution session, mediation or hearing.

CONTENTION NUMBER SIX

Student's issue number six is also insufficient. As with issue number five, this issue is actually an attempt to state multiple issues, none of which give Miller Creek adequate information to understand what is being alleged. The attempt to combine so much into one issue results in Miller Creek having inadequate information as to which goals in which IEPs were not measurable and which were not appropriate to meet Student's needs. Nor was Miller Creek given information about which IEPs failed to offer appropriate accommodations to meet Student's needs. Student also appears to be alleging that Student "never received" counseling, behavioral support or one-to-one executive functioning support, but it is unclear if this issue is alleging a failure to implement an IEP or a failure to offer a needed service. Student also appears to be attempting to allege an issue challenging placement but the statement is very confusing as it only alleges "placement was not based on need and District never created a plan to allow Student to progress in the general education setting. They did not follow the recommendation of their own staff or Dr. Carte when it was recommended that a small nurturing school program was located to Student." Student's Contention number six is insufficient to allow Miller Creek to prepare for resolution session, mediation or hearing.

CONTENTION NUMBER SEVEN

Student's issue number seven is unclear as to how some of the allegations are connected to a denial of parental participation. Student has tried to bundle so much into one issue that the result is a fatal lack of clarity. Student has failed to put Miller Creek on notice regarding which specific incidents being alleged resulted in a denial of parental participation in the IEP development process. Student's Contention number seven is insufficient to allow Miller Creek to prepare for resolution session, mediation or hearing.

ORDER

1. Issues one, two, three, and four of the complaint called Contentions by Student, are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues number five, six and seven of the complaint called Contentions by Student, 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 on the dates currently scheduled, on only Issues one, two, three and four in Student's complaint.

6. For clarity, Student is instructed to identify issues using the word "issues" rather than "contentions" to conform with the wording of the IDEA and California special education law.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings