BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL DISTRICT, LOS ANGELES UNIFIED SCHOOL DISTRICT, RIALTO UNIFIED SCHOOL DISTRICT, LANCASTER SCHOOL DISTRICT, AND SOUTH WHITTIER UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021010028

ORDER FINDING DUE PROCESS COMPLAINT SUFFICIENT AS TO LANCASTER SCHOOL DISTRICT

JANUARY 22, 2021

On January 4, 2021, parent on behalf of Student filed a request for due process hearing, referred to as a complaint, with the Office of Administrative Hearings, called OAH, naming Burbank Unified School District, Los Angeles Unified School District, Rialto Unified School District, Lancaster School District, and South Whittier Unified School District.

On January 22, 2020, Lancaster filed a notice of insufficiency as to Claim 1 of Student's complaint, accompanied by a sworn declaration establishing the timeliness of the notice.

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

In the present matter, at Claim 1, Student alleges that five named school districts violated the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq.) and denied Student a FAPE from 2013 through 2021, or a total of eight years. Student alleges generally that the school districts serially failed in their child find obligations, failed to timely assess Student and make her eligible for special education, and failed to offer her a FAPE. Student alleges at Claims 2 through 4 violations of the Americans with Disabilities Act (28 U.S.C. § 35.130), also called the ADA, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701et seq.), and the California Unruh Civil Rights Act (Civ. Code § 51).

Specifically, Student alleges that while she was in kindergarten in 2013-2014, Los Angeles Unified teachers reported Student's academic and attentional difficulty, and a lack of progress. In first grade in 2014-2015, Student's report cards from Rialto Unified showed a lack of academic progress, with below basic scores in every area. Rialto Unified moved Student to a small group setting as an intervention. In second grade in 2015-2016, Lancaster failed Student in reading and written language. In third grade in 2016-2017, South Whittier Unified reported to Parent that Student was not meeting normal academic standards, and could not read, write, or do math. In fourth grade in 2017-2018, Burbank Unified allegedly did not respond to Parent's September

2018 request for assessment until March 2018, at which time Student was assessed and made eligible for special education. After an April 2018 individualized education program, or IEP, team meeting, Parent hired an advocate for Student.

Lancaster challenges only the sufficiency of Student's allegations under the IDEA. Student's complaint identifies the issues and adequate facts about the problem to permit Lancaster to respond and participate in a resolution session and mediation. Therefore, the facts alleged in Claim 1 of Student's complaint, the only claim brought under the IDEA, are sufficient.

This order does not affect or change the ruling on Lancaster's concurrent motion to dismiss Student's Claim 1 as barred by the statute of limitations that will be addressed in a separate order.

ORDER

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

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings