

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SALINAS UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021090569

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE
PROCESS COMPLAINT

OCTOBER 6, 2021

On September 17, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Salinas Union High School District. On October 1, 2021, Salinas filed a Notice of Insufficiency as to the complaint. On October 5, 2021, Student filed a response to the Notice of Insufficiency.

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 Fed.Reg. 46,540-46541, 46699.)

DISCUSSION

Student's complaint alleges 15 enumerated claims in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

In Issue Aa Student alleges that Salinas Union denied Student a free appropriate public education, called FAPE, by failing to conduct an assistive technology assessment during the 2021-2022 school year. Salinas asserts that the facts supporting this issue occurred outside the relevant time period, *i.e.*, outside of the 2021-2022 time period, and therefore insufficient to support the claim. Student argues that he made a prior request for an assistive technology assessment as part of his prior due process complaint (which the parties' settled as part of an agreement waiving the 2020-2021 school year time period under a settlement agreement), but Salinas failed to assess Student during the 2021-2022 school year. In other words, Student is apparently asserting that Salinas had an obligation to assess Student during the 2021-2022 school year.

Salinas Union's argument that there are no facts alleged supporting Issue Aa is not well-founded. The complaint alleges that Student's severe hearing impairment, communication deficits, social-emotional needs and his specific learning disability make learning difficult, so he would benefit from assistive technology services. Salinas Union argues that claims arising during the 2020-2021 school year or which Student could have brought before OAH in relation to the 2020-2021 school year have been waived and released by the parties' settlement agreement. However, this assertion regarding the scope of the waiver for the 2020-2021 school year goes beyond the allegations in the complaint and is therefore improper on a notice of insufficiency. It cannot be determined from the four corners of the complaint that the terms of the settlement agreement preclude the claim in Student's Issue Aa for the 2021-2022 school year.

Issue Aa is sufficiently pled to put Salinas Union on notice as to the basis of Student's claim in Issue Aa.

In Issue Ab Student alleges that Salinas Union denied Student a FAPE during the 2021-2022 school year by failing to conduct a sufficient speech-language assessment. Salinas Union argues that the complaint lacks facts to support this claim because the assessment is alleged to have occurred during the 2020-2021 school year. Student argues that the alleged facts are sufficient.

Although the complaint is far from a model of clarity, Student seems to be alleging that because that the 2020-2021 speech and language evaluation was insufficient, Student was denied a FAPE during the 2021-2022 school year by not offering appropriate IEP services at the August 27, 2021 individualized education program team meeting, known as an IEP. Issue Ab, as the ALJ has stated the claim, is sufficiently pled to put Salinas Union on notice as to the basis of Student's claim in Issue Ab. If Student intended something beyond the ALJ's understanding of the issue, Student is required to amend his pleading.

In Issues Ac through Ah, Student alleges Salinas Union denied Student a FAPE during the 2021-2022 school year by: failing to offer appropriate IEP supports and services [Issue Ac]; failing to provide a safe learning environment [Issue Ad]; failing to consider and offer an appropriate placement at a non-public school [Issue Ae]; failing to adequately implement Student's IEP services [Issue Af]; failing to provide measurable IEP annual goals [Issue Ag]; and failing to provide updates on IEP annual goals [Issue Ah].

Issues Ad and Ae, are sufficient, and at least for Issue Ae, it appears from the totality of the complaint that the only IEP at issue in this claim is the August 27, 2021 IEP. In the future, Student should identify the IEP(s) at issue in the statement of issues.

However, Issues Ac, Af, Ag and Ah are insufficient. The complaint is confusing and vague and fails to state sufficient facts with regard to each of these four claims. In Issue Ac, Student fails to allege which services and supports were inappropriate or identify the IEP(s) at issue. Issue Af is insufficient because it fails to identify which IEP(s) were not implemented and which services were not adequately implemented. Issue Ag is insufficient because it fails to identify the IEP(s) at issue. It is also confusing because it is unclear if Student is claiming that no measurable goals were offered in the IEP, or if the goals offered were not measurable, or both, and, as to the latter category, which goals Student claims were deficient. Issue Ah is insufficient because Student has failed to identify the IEPs at issue in this claim. The stated issue concerns annual goals, however, the only annual IEP alleged was in February 2021, which Student claims never took place. Adding to the confusion, the only allegation concerning the failure to provide updates on Student's IEP relates to the August 2021 IEP, but that is not alleged to be an annual IEP.

In Issue Ba, Student alleges Salinas Union committed procedural violations which prevented meaningful participation and deprived Student of educational benefit by failing to provide Parent with IEP documents after the February 16, 2021 IEP team meeting. Salinas argues that Issue Ba is insufficient because the claim concerns the 2021-2022 school year which Student alleges was waived by the parties' settlement agreement. Student response to this argument is unclear and confusing.

Issue Ba is insufficient because it is unclear, vague, and confusing. On page 7 in footnote 7, Student alleges that he waived claims for the 2020-2021 school year. Issue Ba relates to a failure to produce records after the February 16, 2021 IEP team meeting. Given the allegations, it is unclear which time period Student intends to cover by Issue Ba, and if the claim is based on the records request made August 27, 2021, or on earlier

alleged events during the 2020-2021 school year which would appear to be barred by Student's allegation that he waived claims for the 2020-2021 school year. If Student amends the complaint, he shall specify in the stated issue the time period at issue and the triggering event creating the obligation to provide the records.

In Issue Bb, Student alleges that Salinas Union committed procedural violations which prevented meaningful participation and deprived Student of educational benefit by failing to have updated IEP services in place for the 2020-2021 school year. Salinas argues that Issue Bb is insufficient for the same reasons as Issue Ba. Student's response is unclear and confusing.

Issue Bb is insufficient because it confusing, vague, and inconsistent with the other allegations in the complaint. As explained above, Student alleges he waived claims for the 2020-2021 school year. Yet, this claim appears to relate to claims for the entire 2020-2021 school year. Student fails to explain this inconsistency. As such, the claim is insufficient. If Student amends his complaint, he shall specify the time period in his stated issue as to when the updated services should have been in place, and which updated services he is referring to in this claim.

Student's Issue Bc alleges that Salinas Union committed procedural violations which prevented meaningful participation and deprived Student of educational benefit by failing to hold an IEP meeting to discuss changes and revisions to Student's IEP services for the 2021-2022 school year. Issue Bc is insufficient because it fails to set forth a time period for the claim and appears to be inconsistent with other allegations in his complaint. Again, Student alleges at page 7 that he waived claims for the 2020-2021 school year, yet this claim appears to concern the IEP team meeting which occurred in February 2021. If Student amends his complaint, he shall specify the time period in his stated issue he asserts Salinas Union should have held this IEP team meeting.

Student's Issue Bd alleges that Salinas Union committed procedural violations which prevented meaningful participation and deprived Student of educational benefit by failing to provide present levels of academic achievement and functional performance. The stated issue fails to identify the time period or IEP(s) at issue and is therefore insufficient.

Student's Issue Be alleges that Salinas Union Student committed procedural violations which prevented meaningful participation and deprived Student of educational benefit by failing provide Parent with prior written notice after refusing to consider Parent's request for a change of placement. The stated issue fails to set forth adequate facts and is vague because it fails to set forth the time period at issue or the date of the Parent's alleged request for a change of placement.

Student Issue Bf alleges that Salinas Union committed procedural violations which prevented meaningful participation and deprived Student of educational benefit by failing consider the findings and recommendations of Dr. Arrillaga's report. Although the complaint fails to specifically allege when Salinas Union allegedly failed to consider the findings and recommendations of Dr. Arrillaga's report, it can be gleaned from the complaint that this allegedly occurred at the August 27, 2021 IEP team meeting. Issue Bf is sufficient in that it contains adequate facts about the problem to permit Salinas Union to respond and participate in a resolution session and mediation.

Student's Issue Bg alleges that Salinas Union committed procedural violations which prevented meaningful participation and deprived Student of educational benefit by failing to make a clear IEP offer for the 2022-2022 school year. Salinas Union argues that the issue is insufficient because Student has failed to specify what was unclear about the offer. Salinas Union also argues that to the extent the offer was made prior to the beginning of the 2021-2022 school year, it barred by the parties' settlement

agreement. And, that if Student claims that the August 2021 IEP is at issue, the claim is unclear because that IEP did not contain any IEP goals and service dates reflecting a change in services. Student contends that the issue states adequate facts about Salinas Union's unclear offer.

Issue Bg is insufficient. The complaint fails to set forth adequate factual allegations regarding how the IEP offer was unclear. The stated issue also fails to identify the IEP(s) at issue. It is unclear if Student is relying on the August 2021 IEP or the revised February 2021 IEP. To the extent Student is relying on the revised February IEP, the allegations on page 7 appear to be inconsistent with the claim since he alleges that claims for the 2020-2021 school year were waived by settlement agreement. Student does not explain this inconsistency in his response. As such, the issue is confusing. In any amended complaint, Student shall identify the IEP(s) at issue and how the offer was unclear.

Student's complaint proposes eight enumerated resolutions. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Salinas argues that resolution number six is unclear because it requests training be ordered "for both school districts" and there is only one school district named as a respondent in this case. Student argues that the reference to "for both school districts" was an inadvertent error, but the proposed remedy is clear that it included Salinas Union.

Although the sixth proposed resolution contains a typographical error by its reference to "both school districts," the proposed resolutions stated in Student's complaint are sufficient. Student has met the statutorily required standard of stating a resolution to the extent known and available to Student as to Salinas Union.

ORDER

1. Issues Aa, Ab, Ad, Ae, and Bf and the stated resolutions are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues Ac, Af, Ag, Ah, Ba through Be and Bg 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). Student shall number his stated issues.
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 Aa, Ab, Ad, Ae and Bf in Student's complaint.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings