BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022060090

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

JUNE 22, 2022

On June 2, 2022, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Sacramento City Unified School District. Sacramento City Unified School District is referred to as Sacramento City. On June 16, 2022, Sacramento City 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).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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 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. (*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

Student's complaint alleges ten issues, all of which are insufficient. The issues are discussed below. Overall, Student's complaint is vague and confusing. The complaint is filled with ambiguities, riddled with grammatical and numerical mistakes, and devoid of facts relating to the issues alleged. Throughout the complaint, Student fails to specifically identify which individualized education program, called IEP, denied her a FAPE. The complaint also generally alleges Sacramento City failed to assess Student in all areas of suspected disability but does not specify which areas should have been assessed or facts supporting its allegations. As a result, the complaint is insufficiently pled to put Sacramento City on notice of the basis of Student's claims.

The complaint alleges Student was found eligible for special education in the area of speech and language on June 22, 2020. Student's June 22, 2022 IEP allegedly provided Student speech and language and occupational therapy services. The complaint alleges the IEP team met on May 25, 2021 and developed two additional speech and language goals in the area of intelligibility and one additional goal in the area of attention and task completion.

Issue One alleges Sacramento City denied Student a FAPE by not assessing Student during the "2021-2022 school year and the 2021-2022 school year." Issue One alleges Student had communication and fine and gross motor delays and should have been found eligible for special education during the second half of the 2020-2021 school year and the 2021-2022 school year. However, this conflicts with the earlier

allegation Student was found eligible for special education in the area of speech and language at an IEP team meeting held on June 22, 2020. This confusion is compounded by the additional allegation an IEP team meeting was held on May 25, 2021 in which additional goals were developed for Student. As pled, Student was found eligible for special education on June 22, 2020, and therefore the conflicting allegation she was not found eligible renders the pleading incomprehensible. Further, the complaint is devoid of critical details regarding in what areas Sacramento City failed to assess Student or during what time period. Issue One is insufficiently pled to put Sacramento City on notice as to the basis of Student's claims.

Issue Two alleges Sacramento City denied Student a FAPE for the 2020-2021 through 2021-2022 school years, including extended school year. Issue Two contains several subparts. Issue Two, subparagraph (a) alleges Sacramento City failed to provide Student a sufficient program and support for Student to receive educational benefit. The complaints fails to identify which IEP is at issue or allege facts explaining why Student believes the offered program was insufficient. Instead, the complaint repeats the earlier allegations Student had communication and fine and gross motor delays. Issue Two, subparagraph (a) is insufficiently pled.

Issue Two, subparagraph (b) alleges the June 22, 2020 IEP did not develop adequate goals for Student in the areas of fine and "large" motor, behavior, adaptive living, preacademic and functional skills domains. The complaint repeats the earlier allegations Student had speech and language and fine and gross motor delays. The complaint fails to state facts explaining why goals should have been developed in the areas of behavior, adaptive living, preacademic and functional skills, or why the proposed goals were inadequate. Issue Two, subparagraph (b) is insufficiently pled.

Issue Two, subparagraph (c) alleges Sacramento City failed to offer goals sufficient to meet Student's needs. The complaint repeats it challenge to the goals developed in the June 22, 2020 IEP and then references an August 16, 2021 IEP. Issue Two, subparagraph (c) contains no facts describing what goals were offered in the August 16, 2021 IEP and in which areas, why they were inadequate, or what areas of need were not addressed. Issue Two, subparagraph (c) is insufficiently pled.

Issue Three alleges Sacramento City denied Student a FAPE by failing to address the "regression" Student suffered by not being enrolled for the second semester of the 2020-2021 school year and extended school year and the first semester of the 2021-2022 school year. The complaint fails to state facts explaining why and when Student disenrolled. Further, it repeats the allegations about Student's areas of need in communication and gross and fine motor skills and reiterates the allegation the goals developed at the August 16, 2021 IEP goals were inappropriate. Issue Three is vague, ambiguous and confusing and is insufficiently pled to put Sacramento City on notice of the basis of Student's claims.

Issue Four alleges Sacramento City denied Student a FAPE by failing to offer intensive individual services through a one-to-one aide. As with the other issues, the complaint repeats the earlier allegations about Student's speech and language and gross and fine motor deficits. Issue Four fails to state facts explaining why Student required a one-to-one aide, during what time period or identify the date of the IEP at issue. Issue Four is insufficiently pled to put Sacramento City on notice of Student's claim.

Issue Five alleges Sacramento City denied Student FAPE by failing to offer a home behavior aide trained in applied behavior analysis and "clinic meetings" for the 2021-2022 school year. The complaint refers to an October 13, 2019 evaluation by Autism

Spectrum Therapies and in-home services provided to Student. The complaint further refers to a May 9, 2020 evaluation by Pacific Brain and Behavior and a purported diagnosis of autism. There are no allegations Sacramento City was in receipt of these reports, whether they were considered by Student's IEP team or why applied behavior analysis services were required in the educational setting to provide Student a FAPE. The complaint also fails to identify the specific IEP which Student contends failed to offer Student a FAPE. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue Six alleges Sacramento City denied Student a FAPE for the 2021-2022 school year by failing to offer parent training. Issue Six is devoid of factual allegations regarding why parent training was required or in what areas, and how and when Sacramento City should have been aware parent training was required. Issue Six is insufficiently pled.

Issue Seven alleges Sacramento City failed to offer adequate individual speech and language services. The complaint fails to state facts regarding which IEP is at issue, the offer of FAPE set forth in the IEP and why the offer of speech and language services was insufficient. Student refers to the inadequacy of the goals in the August 2021 IEP but does not state facts explaining why the offer of speech and language services was inadequate. Issue Seven is inadequately pled.

Issue Eight alleges Sacramento City failed to offer goals to address Student's areas of need. Issue Eight does not reference the goals developed in any specific IEP or explain why they were inadequate. Further, Issue Eight alleges Sacramento City failed to assess Student in numerous areas and to offer appropriate services. As drafted, Issue Eight is vague, ambiguous, and confusing.

Issue Eight duplicates its earlier claims Sacramento City failed to offer appropriate goals in the areas of speech and language and fine and gross motor skills. It fails to add any new facts or identify which IEP it believes offered inadequate goals in these areas. Issue Eight further alleges goals should have been developed in the areas of auditory processing, adaptive living skills, social emotional/behavioral, and academics, but offers no facts in support of this contentions. Issue Eight is rendered more confusing by switching from the failure to offer appropriate goals to alleging Sacramento City failed to assess Student in these areas. No facts are alleged explaining why Student should have been assessed in the areas of fine and gross motor skills, adaptive living skills, autism spectrum disorder, and auditory processing disorder, or when Sacramento City should have been aware of Student's areas of needs in these areas.

Finally, Issue Eight alleges Sacramento City failed to offer Student extended school year services. The complaint fails to clarify which IEP or time period is at issue, or to make any specific allegations regarding why extended school year services should have been offered.

Issue Eight is insufficiently pled to put Sacramento City on notice of the basis of its claims.

Issue Nine alleges a denial of FAPE based on failure to have a general education teacher present at the June 20, 2020 IEP team meeting. However, the complaint then alleges the general education teacher was not present at the August 16, 2021 IEP team meeting. Issue Nine is vague and ambiguous and is insufficiently pled.

Issue Ten alleges a denial of FAPE by failing to find Student eligible for special education at the June 22, 2020 IEP team meeting. This directly contradicts the earlier

allegation Student was found eligible for special education under the category of speech and language. Issue Ten is insufficiently pled.

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).) Student's proposed resolutions request a compensatory education fund of $50,000 for "removal from school for his inability to wear a mask." The complaint contains no facts relating to Student's removal from school for her inability to wear a mask, and therefore this is an inappropriate resolution. The complaint also requests an additional compensatory education fund of approximately $500,000 but provides no basis for how this number was calculated. The resolutions also include goals be drafted for the 4-year-old Student in 69 areas, including geometry.

The proposed resolutions stated in Student's complaint are not well-defined. Student's complaint fails to meet the statutorily required standard of stating a resolution to the extent known and available to her at the time. As drafted, the resolutions are inappropriately pled.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. 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.

4. The proposed resolutions shall comply with the requirements of 20 United States Code section 1415(b)(7)(A)(ii)(IV).)
5. If Student fails to file a timely amended complaint, the complaint will be dismissed.
6. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings