BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SIERRA SANDS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024040516

ORDER DETERMINING FIRST AMENDED DUE PROCESS COMPLAINT INSUFFICIENT

MAY 1, 2024

On April 22, 2024, Student filed an amended due process hearing request, called a first amended complaint, with the Office of Administrative Hearings, called OAH, naming Sierra Sands Unified School District. On April 30, 2024, Sierra Sands filed a notice of insufficiency as to Student's first amended complaint contending that it lacks necessary facts and is insufficient.

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 considering 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.)

Student's first amended complaint alleges three insufficiently pled issues. Issue One alleges Student was denied a free appropriate public education, called FAPE, beginning in March 2020. Issues Two and Three do not state the dates or school years at issue. Student's complaint was filed on April 10, 2024. Therefore, issues occurring during the 2021-2022 school year, arising on or after April 10, 2022, are within the two-year statute of limitations. (20 U.S.C. §§ 1415(b)(6) &(f)(3)(C); 34 C.F.R. § 300.507(a) (2006); Ed. Code, §§ 56501, subd. (a), 56505, subd. (*l*).) It is unclear whether Student is attempting to challenge decisions made about Student's education beyond the two-year statute of limitations for special education claims. (20 U.S.C. §§ 1415(b)(6) &(f)(3)(C); 34 C.F.R. § 300.507(a) (2006); Ed. Code, §§ 56501, subd. (a), 56505, subd. (l).) If Student intended to raise claims beyond the statutory period, they are insufficiently pled as no facts regarding exceptions or tolling of the statute of limitations are set forth to give Sierra Sands the requisite notice.

As to the specific claims pled for each issue in Student's first amended complaint, the allegations are insufficient. As to Issue One, the first amended complaint alleges and is summarized below:

- As to Student's placement in online learning, Student was enrolled in online learning with no resources provided that are listed in the individual individualized education program, called IEP.
- As to Student's placement at Richmond Elementary, Student was denied a FAPE by not being received by staff members at school resulting in returning home. Student was also denied a FAPE by being sent home by school personnel daily;
- As to Student's placement at the Autism Academy, Student was denied a FAPE due to the lack of staffing to enable it to transition Student

from home to van, yet still enrolled Student at the school, and dismissed Parent concerns about Student's inability to travel;

- As to Student's placement a Richmond Elementary for a second time, Student was denied a FAPE by not being received by staff members at school resulting in returning home. Student was also denied FAPE by being sent home by school personnel daily; and
- As to Student's online learning, Student was denied a FAPE by making changes to Student's IEP without Parent approving it or being a part of the decision.

Issue One is insufficient because it is does not state facts regarding when these events occurred, including the date of the IEP or IEPs at issue for each allegation, what IEP or IEPs were not implemented, what IEP team meeting Sierra Sands failed to include Parent at, or if there was no IEP team meeting. Issue One is also vague and confusing because it refers to numerous placements without facts such as the dates of the placements and includes multiple and broad allegations with little information to even comprehend what the issue is and whether OAH has jurisdiction over the allegation. Accordingly, Student's Issue One fails to provide the requisite notice to Sierra Sands to defend itself in this matter and enable it to participate in mediation and the due process hearing.

With respect to Issue Two, the first amended complaint alleges and is summarized as:

- Student has been denied progress reporting to Parent and academic assessments to track and evaluate progress or lack of progress;
- In the latest progress report, Student has not been adequately assessed by the school to evaluate or report progress to Parent;

- In the latest academic assessment, Student was not adequately assessed by the school; and
- As to the February 8 psychological evaluation, staff left without completing the evaluation. It was rescheduled for February 27, 2024, where no staff showed up. School staff came to the home for evaluations but did not complete the evaluations on April 15 and 17, 2024.

Again, Student does not allege the date or school year during which Student believes Sierra Sands denied Student a FAPE or specify which IEP or IEPs are at issue for the first three allegations in Issue Two. As to the last allegation that includes dates, the issue is confusing and unclear to be able to determine what the allegation is. Accordingly, Issue Two is insufficiently pled. It fails to provide the requisite notice to Sierra Sands to defend itself in this matter and enable it to participate in mediation and the due process hearing.

As to Issue Three, Student's first amended complaint alleges and is summarized as:

- Student has been denied IEP renewals and has been denied IEP updates;
- The last IEP was July 2023, but informal changes were made around November 6, 2023, without parental consent, or an IEP team meeting;
- The annual renewal IEP was due March 2024;
- Refusal of accurate records requested by parent; and
- Refusal of school personnel to contact regarding Student;

Student's complaint alleges he has "been denied IEP renewals" and "updates" but does not specify for which school year. Issue Three also alleges changes were made to a July 2023 IEP around November 6, 2023, but fails to state what changes were made.

Further, Issue Three alleges that an annual renewal was due in March 2024 but fails to allege any other facts as to this allegation or why this is a denial of FAPE. For example, Student failed to state if Sierra Sands failed to hold a timely annual IEP team meeting in March 2024, or if this relates to something else. Student's allegations regarding failing to provide records does not include the time at issue such as when the request was made to Sierra Sands and what Sierra Sands failed to provide. Additionally, Student's allegation regarding school personnel and contact is confusing and vague and it is unclear what the allegation is. Thus, Issue Three is insufficiently pled and fails to give Sierra Sands the requisite notice to defend itself and prepare for mediation and due process hearing.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent without an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parent is encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. The complaint is insufficient under title 20 United States Code section 1415(c)(2)(D).
2. Student will be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. 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.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings