BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NEWARK UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022120182

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY INSUFFICIENT

JANUARY 20, 2023

On December 6, 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 Newark Unified School District. OAH issued an Order dated December 20, 2022, determining Student's complaint to be insufficient. OAH served the parties a copy of the December 20, 2022 Order Determining Due Process Complaint Insufficient on December 21, 2022. The December 20, 2022 Order permitted Student to file an amended complaint pursuant to title 20 United States Code section 1415(c)(2)(E)(i)(II) no later than 14 days from the date of the Order.

On January 3, 2023, at 4:59 PM, Parent on behalf of Student timely filed with OAH an amended complaint naming Newark Unified. On January 17, 2023, Newark Unified timely filed a Notice of Insufficiency to the amended 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 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 amended complaint lists nine issues, two of which, are partially sufficient and the remaining issues are insufficient. The issues are discussed below.

Issue 1 is partially sufficient. The amended complaint identifies the period of alleged violations in Issue 1 to have occurred during the 2020-2021, 2021-2022, and 2022-2023 school years. The amended complaint specifically states on its fourth page that Student's claims are limited to claims within the two-year statute of limitations. Therefore, the claims in Issue 1 are limited to alleged violations that occurred from December 6, 2020, through January 3, 2023, the date of filing of the amended complaint.

In Issue 1, Student contends Newark Unified failed to implement from December 6, 2020, aspects of Student's April 23, 2019 individualized education program, called an IEP. The amended complaint sufficiently identifies the components of the April 23, 2019 IEP that Newark Unified allegedly failed to implement, which included

program accommodations, consultations for occupational therapy, physical therapy, speech and language therapy, as well as services for physical therapy, occupational therapy, and speech and language therapy, a one-to-one aide, transportation, and extended school year services.

In addition, Issue 1's contention as to the goals offered in the March 29, 2021 IEP is sufficiently pled. Student argues that the IEP offered goals that Student had already met, did not contain baselines, and were not measurable. The amended complaint provides sufficient information regarding Student's contention over the March 29, 2021 IEP's offered goals.

Furthermore, Student contends in Issue 1 that from October 1, 2021, through June 1, 2022, Newark Unified failed to implement accommodations, supports, consultations, and other services apart from speech and language therapy, occupational therapy, and physical therapy. This contention is sufficiently pled to provide Newark Unified with an awareness and understanding of the problem.

The amended complaint provides sufficient information regarding alleged failures to implement the April 23, 2019 IEP, to offer appropriate goals in the March 29, 2021 IEP, and to implement accommodations, supports, consultations, and other services from October 1, 2021, through June 1, 2022, to provide Newark Unified an awareness and understanding of the problems to allow Newark Unified to prepare for hearing and to participate in resolution sessions and mediation. Accordingly, Issue 1 is sufficient in regard to those claims.

The remaining claims raised in Issue 1 are insufficiently pled. Student contends Parent requested assessments, and Newark Unified removed or decreased accommodations and services offered in the March 29, 2019 IEP without first assessing

Student. However, the amended complaint fails to describe how the accommodations or the services offered in the March 29, 2021 IEP were inadequate and denied Student a FAPE. Issue 1 fails to provide sufficient information about the problems with the March 29, 2021 IEP's offer of accommodations and services to provide Newark Unified an awareness and understanding of the problems involving that IEP. Accordingly, Issue 1 is insufficient as to claims involving the March 20, 2021 IEP's offer of accommodations and services.

In addition, the amended complaint fails to state sufficient facts to describe problems involving the 2022-2023 school year in Issue 1, to provide Newark Unified an understanding of the problems during the 2022-2023 school year, to enable Newark Unified to prepare for hearing and participate in a resolution session. Accordingly, Issue 1 is insufficient regarding claims for the 2022-2023 school year.

In sum, Issue 1 is sufficiently pled regarding claims of the alleged failure by Newark Unified to implement the April 19, 2019 IEP from December 6, 2020, the inadequacies of the goals offered in the March 29, 2021 IEP, and the failures to implement accommodations, supports, and services from October 1, 2021, through June 1, 2022. However, Issue 1 is insufficiently pled as it relates to any other claims involving the March 29, 2021 IEP, and the 2022-2023 school year.

Issue 2 is insufficiently pled. The amended complaint fails to identify the dates, the school years, or IEP team meetings that Newark Unified allegedly failed to provide Parent with copies of IEP related documents, ignored Parent's requests and input, denied Parent access to information available to other IEP team members, and denied Parent an opportunity to make a recording of IEP team meetings. The amended complaint fails to provide Newark Unified with an awareness and understanding as to

when Newark Unified allegedly impeded Parent's opportunity to meaningfully participate in the IEP process. Accordingly, Issue 2 is insufficient.

Issue 3 is insufficiently pled. Issue 3 alleges Newark Unified retaliated against Parent. However, Issue 3 fails to provide sufficient information of a problem involving the identification, evaluation, or educational placement, or the provision of a FAPE to Student. A party has the right to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.). OAH does not have jurisdiction over claims involving retaliation by a school district against a parent. The amended complaint fails to provide Newark Unified with an awareness and understanding of a problem in Issue 3 that OAH has jurisdiction over. Accordingly, Issue 3 is insufficient.

As to Issue 4, the amended complaint is unclear as to what Student is claiming from December 6, 2020, through the 2020-2021 school year. Student claims that non-traditional classroom aides were responsible for assessing Student. Issue 4 then discusses the classroom teacher and states that the teacher was unaware of Student's needs, and the teacher isolated Student. The problem described in Issue 4 is confusing,

and does not provide sufficient information related to assessments or the conduct of the classroom aides and teacher, to provide Newark Unified with an awareness and understanding of the problem. Accordingly, Issue 4 is insufficient.

Issue 5 is insufficiently pled. The heading of Issue 5 contends that Newark Unified failed to schedule IEP team meetings when requested by Parent. However, the description of the problems in Issue 5 includes the same problems described in Issue 2, and similarly fails to provide the dates or school years related to the problems. In addition, Issue 5 fails to describe any request by Parent to convene an IEP team meeting that Newark Unified failed to schedule. Thus, Issue 5 is confusing, and in addition, is insufficient for the same reasons as Issue 2.

Issue 6 raises the same claims in Issue 1 involving the goals, accommodations and services offered in the March 29, 2021 IEP. Issue 6 is sufficient and insufficient for the same reasons those claims were found sufficient and insufficient in Issue 1.

Issue 7 is confusing and thus, insufficiently pled. The heading for Issue 7 states that Student could not attend extended school year following the 2020-2021 regular school year. However, the extended school year identified in the description of the problem follows the 2021-2022 regular school year, not the 2020-2021 school year. The amended complaint is unclear if Student is claiming that Student could not attend extend school year services during summer 2021 or summer 2022. The amended complaint fails to provide Newark Unified with an awareness and understanding of the when the problem occurred in Issue 7. Accordingly, Issue 7 is insufficient.

Issue 8 is also insufficiently pled. The heading of Issue 8 contends Newark Unified retaliated against Parent and subjected Parent to duress during the 2022-2023 school year. Issue 8 describes Parent's communications with Newark Unified to send

Student to school and the conditions Newark Unified allegedly placed on Parent for Student to be allowed to attend school. Student claims the conditions placed by Newark Unified constituted retaliation against Parent. However, as discussed in this Order's analysis of Issue 3, OAH does not have jurisdiction to address claims of retaliation. Issue 8 fails to provide Newark Unified with an awareness and understanding of a problem that OAH has jurisdiction over. Accordingly, Issue 8 is insufficient.

Issue 9 is insufficiently pled. Issue 9 fails to identify the dates, school years, or IEPs that Newark Unified failed to offer Student placement in the least restrictive environment. The amended complaint fails to provide Newark Unified with an awareness and understanding as to when Newark Unified failed to offer Student placement in the least restrictive environment. Accordingly, Issue 9 is insufficient.

Student's proposed resolutions request funding for placement in an appropriate program, a one-to-one aide, funding for an educational specialist, service providers trained in Student's medical and educational needs, reimbursement for a private assessment, compensatory educational services, and an offer of an appropriate program and placement from Newark Unified. 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).) The proposed resolutions stated in Student amended complaint are well-defined, and meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

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.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues 1 and 6 of Student's amended complaint, as to claims involving implementation of the April 19, 2019 IEP from December 6, 2020, the inadequacies of the goals offered in the March 29, 2021 IEP, and implementation of accommodations, supports, and services from October 1, 2021, through June 1, 2022, are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues 1 and 6 of Student's amended complaint, as to claims involving accommodations and services offered in the March 29, 2021 IEP, and the 2022-2023 school year, are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Issues 2, 3, 4, 5, 7, 8, and 9 of Student's amended complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
4. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
5. The second amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this Order. The filing of a second amended complaint will restart the applicable timelines for a due process hearing.

6. If Student fails to file a timely second amended complaint, the hearing shall proceed only on Issues 1 and 6 as to claims involving implementation of the April 19, 2019 IEP from December 6, 2020, the inadequacies of the goals offered in the March 29, 2021 IEP, and implementation of accommodations, supports, and services from October 1, 2021, through June 1, 2022.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings