BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

KELSEYVILLE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022080771

ORDER DETERMINING PARTIAL SUFFICIENCY OF DUE PROCESS COMPLAINT

SEPTEMBER 7, 2022

On August 24, 2022, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Kelseyville Unified School District. On September 2, 2022, Kelseyville 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).

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

Generally, Kelseyville complains Student's request for due process hearing purports to challenge the May 11, 2020 individualized education program, called IEP, developed and offered to Student more than two years before Student filed his complaint and outside the state of limitations. (20 U.S.C. § 1415(f)(3)(C); Ed. Code, § 56505(*l*).) Student fails to make even conclusory assertions his complaint was filed within two years of the date on which Student, over the age of 18, or Parents, "knew or should have known about the alleged action that forms the basis of the due process complaint" (34 C.F.R. § 300.507(a)(2)), or "knew or had reason to know of the facts underlying the basis for the request" (Ed. Code, § 56505, subd. (*l*)). Student also failed to plead any facts that would possibly constitute one of the two statutory exceptions to the two-year statute of limitations. (20 U.S.C. § 1415(f)(3)(D); Ed. Code, § 56505, subd. (*l*).)

Therefore, to the extent Student's complaint claimed any denial of free appropriate public education, called FAPE, more than two years before the complaint was filed on August 24, 2022, it is insufficient and Student's claims are limited to those issues stated in Student's complaint that arose on or after August 24, 2020. (*M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012, Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, ** 17 – 19, affd. in part & revd. in part (9th Cir. 2014) 767 F.3d 842, 858-859; *K.P., etc., v. Salinas Union High School Dist.* (N.D.Cal. April 8, 2016, Case No.5:08-cv-03076-HRL) 2016 WL 1394377.)

Kelseyville also specifically challenged what Student identified as Issues 1, 2, 4(a), 7, 11, and 13. Kelseyville asserted Student failed to state sufficient facts to support these claims or in one Issue disputes identified, specific IEPs with dates on which Kelseyville has no record of Student having had an IEP team meeting held.

Student's complaint is internally repetitive as well as grossly similar to other requests for due process hearing filed with the Office of Administrative Hearings by Student's attorney. To the extent Student's complaint alleges denial of FAPE in IEPs bearing dates that do not match any of Student's IEPs, possibly as a relic of a request for due process hearing Student's attorney prepared for another client, or the result of a careless copy-and-paste operation, that does not make Student's complaint insufficiently pleaded. Whether Student could meet his burden of proof on the issue at a due process hearing is not the standard in evaluating the sufficiency of a complaint under the IDEA.

Further, there is inconsistency in the broad statement of Issue 4 in Student's complaint on page 28, lines 1 through 4, as concerning the October 28, 2020 amendment to the May 11, 2020 IEP, and the May 4, 2021 IEP, and dates stated in Issue 4(a). Issue 4(b) states a challenge to the adequacy of the goals developed and offered in the October 28, 2020 amendment to the May 11, 2020 IEP, and in the May 4, 2021 IEP, and Issue 4(c) states a challenge to the adequacy of the accommodations offered in the October 28, 2020 amendment to the May 11, 2020 IEP, and in the May 4, 2021 IEP. In contrast, Issue 4(a) states a challenge to the "services" offered in the April 15, 2021, and April 12, 2022, IEPs. Whether Student intends to prove the "services" offered in IEPs dated April 15, 2021, and April 12, 2022, were inappropriate, or amend his complaint to correct the dates to match the dates stated as the heading of Issue 4 and the specific goals component challenged in Issue 4(b) is not the concern in ruling on a notice of insufficiency.

Student's complaint alleges many facts under various Issue statements that do not seem to relate to the Issue as Student's attorney framed it, and sometimes does not state facts that squarely relate to an Issue as Student's attorney framed it. However, the

complaint is sufficient to put Kelseyville on notice that Student contends he was denied a FAPE on and after August 24, 2020, in the following ways related to the Issues Student enumerated as 1, 2, 4(a), 7, 11, and 13:

1. By assigning Student to distance learning without continuing to provide Student in-person services from August 24, 2020, to the end of the 2020-2021 school year;
2. Assigning Student to distance learning without providing Student the necessary accommodations from August 24, 2020, to the end of the 2020-2021 school year;
4. a. Failing in the April 15, 2021 and April 12, 2022 IEPs to offer appropriate services;
7. Failing in the October 28, 2020 amendment to the May 11, 2020 IEP, and in the May 4, 2021 IEP, to offer appropriate and sufficient speech and language services, and a one-to-one aide;
11. Failing from August 24, 2020, through August 24, 2022, to implement transition services in accordance with Student's IEPs in effect during that time; and
13. Failing in the October 28, 2020 amendment to the May 11, 2020 IEP, and in the May 4, 2021 IEP, to offer sufficient parent training.

Student's complaint identifies the issues and adequate facts about the problems to permit Kelseyville to respond and participate in a resolution session, mediation, and prepare for a due process hearing. Further reorganization and refinement of issues can be done based on discussion with the parties and an Administrative Law Judge at a prehearing conference if the parties have not already resolved Student's case by that date.

Therefore, Student's statement of the Issues numbered 1, 2, 4(a), 7, 11, and 13 is sufficient.

ORDER

1. Student's complaint is insufficiently pleaded under title 20 United States Code section 1415(c)(2)(D) as to any denial of FAPE more than two years before the complaint was filed, and Student's claims are limited to those issues stated in Student's complaint that arose on or after August 24, 2020.
2. Student's Issues 1, 2, 4(a), 7, 11, and 13 of Student's complaint, challenged by Kelseyville Unified School District as insufficiently pleaded, are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
3. All prehearing conference and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings