BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024071006

ORDER DETERMINING DUE PROCESS COMPLAINT SUFFICIENT

AUGUST 9, 2024

On July 27, 2024, Parents on behalf of Student, filed a Due Process Hearing Request, also called a complaint, with the Office of Administrative Hearings, called as OAH, naming Livermore Valley Joint Unified School District as respondent. On August 9, 2024, Livermore filed a Notice of Insufficiency as to the complaint.

Minimal pleading standards apply to requests for due process pursuant to the Individuals with Disabilities Education Act. (*Schaffer ex rel. Schaffer v. Weast*, (2005) 546 U.S. 49, 54 [126 S.Ct. 528, 163 L.Ed.2d 387].) 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 Individuals with Disabilities Education Act, or 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.] 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 46541, 46699.)

Livermore asserts that Student's Issues 1 and 3 do not meet the legal requirements. Livermore asserts Issue 1 is deficient because it does not state the basis for extending the statute of limitations to its claims related to the May 23, 2022 Individualized Educational Program, or IEP. Livermore argues that, without additional facts alleging a basis to extend the statute of limitations, the issue fails to allege adequate facts, as Student would have to prove an exception to the statute of limitations before being able to make claims associated with the May 23, 2022 IEP.

Livermore asserts that Student's Issue number 3 is deficient because it includes claims extending beyond the filing date. Livermore argues that claims stated beyond the filing date of the complaint are deficient because the allegations fail to include "facts as to how issues pled beyond the filing date of the complaint are permissible."

STUDENT'S COMPLAINT PLEADS FACTS SUFFICIENT TO PUT LIVERMORE ON NOTICE OF CLAIMS DATING BACK TO THE MAY 23, 2022 IEP

Livermore has failed to cite to any persuasive authority that requires OAH to dismiss issues facially outside the two-year statute of limitations for failure to provide all of the facts that give rise to an exception to the two-year statute of limitations, or a right to extend the statute of limitations. Although Livermore cites to OAH Decisions or orders it argues requires specific allegations in pleadings, the citations do not analyze the similarities with this case. Rather, the citations are accompanied by out of context quotations that do not specify the connection between the citations and this case. Special education cases are all different and prior orders and Decisions from OAH are not precedential. (Govt. Code § 11425.60; tit. 5, Cal Code Regs, § 3085.)

Student also cites to E.F. by and through his parents Fulsang et al. v. Newport Mesa Unified School District (C.D.Cal., June 23, 2015, No. SACV 14-00455-CJC (RNBx)) 2015 WL 3867982, p.8, fn.6; affd. on remand E.F. by and through Fulsang v. Newport Mesa Unified School District (9th Cir. 2018) 726 Fed.Appx. 535.) This case is cited for the proposition that, "Special education law does not recognize the doctoring (sic) of continuing violations, meaning that Student cannot bring claims on defects of the May 23, 2022, IEP without first proving an exception to the statute-of-limitations period." It is assumed Livermore meant the doctrine of continuing violations.

The 9th Circuit remand decision did not address a statute of limitations issue. It was remanded in light of the Supreme Court's then recent *Endrew F.* decision. (*Endrew F. v. Douglas County School District RE-1*, (2017) 580 U.S. 386, 137 S. Ct. 988, 197 L.Ed.2d 335.) The case was remanded to determine whether *Endrew F.* impacted the 9th Circuit's analysis of whether Newport Mesa's IEP provided E.F. a FAPE. While a footnote in the underlying, unpublished district court case mentioned the ALJ's determination of a statute of limitations issue at the administrative hearing level, Livermore fails to identify why this is not dicta, or how this comment supports it assertion that Student must plead all facts supporting a stated claim beyond the basic two-year statute of limitations at the pleading stage.

Student's issue one pleads a denial of FAPE during the 2022-2023 school year, based on defects in the May 23. 2022 IEP and March 15, 2023 IEPs. Student's complaint, which OAH received after 5 pm on July 26, 2024, is deemed filed on July 27, 2024. While Student may be asserting some issues which pre-date the basic two-year statute of limitations, Livermore has failed to offer legal authority requiring Student's request for due process hearing to plead all facts that would need to be established to extend the statute of limitations in order for the complaint to be sufficient. Livermore is put on notice that Student may be stating claims back to the May 23, 2022 IEP which is sufficient to all Livermore to prepare for resolution session, mediation, or hearing.

Student's issue number 3 asserts that Livermore denied Student a FAPE from February 7, 2024 through the 2023-2024 school year, including the extended school year, and through the 2024-2025 school year through the date of the decision. Livermore fails to offer any legal authority supporting its assertion that this allegation is impermissible. OAH generally limits complaints to allegations to the date of filing on the grounds that a district cannot be put on notice of something that has not yet

happened. However, clarifying allegations that are asserted beyond the filing date is a matter generally discussed at prehearing conference. Livermore offers no legal authority that, as pled, this allegation is insufficient.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed. IEP.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings