BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023060741

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

JULY 10, 2023

On June 21, 2023, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Manhattan Beach Unified School District. On June 30, 2023, Manhattan Beach Unified School District 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 Board of Education v. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Board* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; Cf. *M.S.-G v. Lenape Regional High School Dist. Board of Education* (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 Education of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

The complaint is not a model of clarity. It is impossible from reviewing the complaint to determine all the problems relating to the identification, evaluation or educational placement or the provision of a free appropriate education, called FAPE, Student seeks to have OAH address. Student fails to clearly enumerate anywhere in the complaint each of the issues for hearing. Instead, the complaint sets forth a long history/timeline of events, which fails to provide complete awareness and understanding of the scope of the issues forming the basis of the complaint to allow Manhattan Beach Unified to properly prepare for a resolution session, mediation, or a due process hearing. Among other things, the complaint generally alleges Manhattan Beach Unified has committed several procedural and substantive violations but does not clearly specify the procedural and substantive violations, asserting that Student reserves the right to modify or restate the way the problems are presented.

Some of the claims have been sufficiently pled and others are insufficient. Because Student has failed to enumerate or otherwise specify the issues, this Order will address the claims by using the headings in the complaint.

Regarding section labeled educational history, Student has failed to sufficiently allege any issues. Although Student claims she was denied a FAPE, it appears on the face of the pleading all these claims are barred by the statute of limitations, and Student has failed to allege any facts supporting application of an exception to the statute of limitations. (See 20 U.S.C. §1415(f)(3)(C) & (D); Ed. Code, § 56505, subd. (*l*).) The IDEA does not recognize a "continuing violation" exception to the statute of limitations. (See e.g. *J.L. v. Ambridge Area School Dist*. (W.D. Pa. 2008) 622 F. Supp. 2d 257, 268-269 [there is no continuing violation exception under the IDEA]; *White v. District of Columbia* (D.C. Cir., March 31, 2022, No. 20-cv-3821 (APM)) 2022 WL 971330, at *4-5 [student's

challenge to a reevaluation time-barred because there is no ongoing obligation to assess the sufficiency of a reevaluation].)

With regard to the September 22, 2021 IEP, Student has sufficiently alleged that Manhattan Beach Unified denied her a FAPE by the failure to offer her counseling services to address her attention and off-task behavior issues. To the extent Student intended to allege any other claims, those are insufficiently pled. Among other things, Student has failed to allege what type of service was not offered to address her needs in reading and math. Further, given this was Student's 30-day IEP, it is unclear what Student means by the allegation that the school district "continued" to fail to provide sufficient services. It is also unclear if Student is alleging that Manhattan Beach failed to offer program modifications or failed to implement the program modifications offered, and Student has failed to identify the program modifications at issue. Student should clearly state whether she is making an implementation claim, or a failure to offer claim, and specify the program modifications at issue. To the extent Student believes the services or supports offered in the September 22, 2021 IEP were inadequate, Student is required to specify which services or supports were inadequate and the reasons why they were inadequate.

With regard to the January 14, 2022 IEP, Student has sufficiently alleged Manhattan Beach Unified denied her a FAPE by failing to offer her any counseling services to address her needs in attention, peer relations, executive functioning, following instructions, class participation and aggression. Student has also sufficiently alleged that the IEP failed to offer an appropriate among of occupational therapy to address Student's needs in fine motor coordination for rapid placement of small objects. Any other claims are insufficiently pled. Among other things, Student alleged the school district failed to offer sufficient services to address her needs in writing, but failed to

specify the type of services lacking, i.e., occupational therapy services or something else. Student also alleged Manhattan Beach Unified failed to offer appropriate support to allow Student to succeed in reading but failed to identify the support it claimed Student required, e.g., writing goals or something else. It is also unclear if Student is alleging that Manhattan Beach Unified failed to offer program modifications or failed to implement the program modifications offered, and the program modifications at issue have not been specified. Student should clearly state whether she is making an implementation claim, or a failure to offer claim, and specify the program modifications at issue. To the extent Student believes the services and supports offered in the January 14, 2022 IEP were inadequate, Student is required to specify which services and supports were inadequate and the reasons why.

With regard to the September 20, 2022, assessment plan section, none of the claims have been sufficiently pled. The Complaint does not reference specific facts or a description as to how Student was denied a FAPE as it relates to the September 20, 2022, assessment plan. It is unclear if Student is taking issue with the assessment plan or the assessment and why. Student alleges she was denied a FAPE because of the inadequate support "provided," thus it is unclear if Student is making a failure to implement claim or a failure to offer claim. Student also fails to identify the IEP at issue and the type of support Student claims was inadequate. Student should clearly state whether she is making an implementation claim, or a failure to offer claim, and specify the IEP at issue. To the extent Student believes the support offered was inadequate, Student is required to specify which support she is claiming was inadequate and the reasons why. If Student is challenging the assessment plan or the assessment, that should be specified along with the facts to support that claim. As a result of the complaint's overall ambiguity, one can only speculate as to what claims Student intended to assert.

The September 30, 2022, IEP, sufficiently alleges Manhattan Beach Unified failed to offer an appropriate placement to address Student's attentional challenges.

With regard to the January 13, 2023 IEP, Student's claims are insufficiently pled. Among other things, Student has failed to allege what type of service or support was lacking to address her needs in reading, writing, math, history/social science and science. Further, it is unclear whether Student is claiming that the IEP was procedurally defective based on what the IEP did not state regarding improvement in social situations and behavior or whether this is just background information. Student also alleges the IEP should have offered "greater services" but does not specify which services should have been "greater." To the extent Student believes the services offered in the January 13, 2023 IEP were inadequate, Student is required to specify which services were inadequate and the reasons why.

With regard to the January 25, 2023 assessment plan, it does not appear Student is making a claim regarding this assessment plan. To the extent Student intends to assert a claim, it has not been sufficiently pled.

With regard to the March 29, 2023 IEP, it is unclear if Student is claiming more counseling services should have been offered or that educationally related mental health counseling services should have been offered. The complaint is vague and ambiguous, and as such, insufficient regarding this issue. The complaint also alleges "more support" should have been provided but does not specify the type support and if Student intends that allegation as an issue, or whether the claim is merely that Manhattan Beach Unified should have offered a non-public school placement as part of the March 29, 2023 IEP offer of special education and related services. Student should clearly specify the claims she is making, separately, item by item.

With regard to the May 19, 2023 IEP, Student has sufficiently alleged that Manhattan Beach Unified failed to offer her an adequate placement, but failed to adequately plead what other "support" should have been offered for a FAPE. Student should specify the type of support that should have been offered.

It does not appear Student is making a claim regarding the May 30, 2023 IEP. To the extent Student intended to make a claim regarding this IEP, it has not been sufficiently pled.

All of Student's claims are insufficient except those specifically identified as sufficient above. Student is granted leave to amend the complaint to the extent she intends to raise issues beyond those deemed sufficient. The amended pleading shall clearly enumerate all issues at the end of the factual allegations just prior to the proposed resolutions, and for each issue or sub-issue where applicable, identify the IEP at issue and separately state each component Student is challenging, including the specific service or support or procedural violation, in addition to correcting the deficiencies discussed above.

ORDER

1. Student has failed to sufficiently allege any issues for the period prior to the September 22, 2021 IEP or any other issues for the period beginning September 22, 2021, except for those issues listed in numbers 2 through 6.
2. Student has sufficiently alleged Manhattan Beach Unified denied her a FAPE in the September 21, 2022 IEP by the failure to offer her counseling services to address her attention and off-task behavior issues.
3. Student has sufficiently alleged Manhattan Beach Unified denied her a FAPE in the January 14, 2022 IEP by failing to offer her any counseling services to

address her needs in attention, peer relations, executive functioning, following instructions, class participation and aggression.

4. Student has sufficiently alleged Manhattan Beach Unified denied her a FAPE in the January 14, 2022 IEP by failing to offer an appropriate amount of occupational therapy to address her needs in fine motor coordination for rapid placement of small objects.
5. Student has sufficiently alleged Manhattan Beach Unified denied her a FAPE in the September 30, 2022 IEP by failing to offer an appropriate placement to address Student's attentional challenges.
6. Student has sufficiently alleged Manhattan Beach Unified denied her a FAPE in the May 19, 2023 IEP by failing to offer her an adequate placement.
7. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
8. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii) and the instructions in this Order and shall 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.
9. If Student fails to file a timely amended complaint, the hearing shall proceed only on the issues listed in numbers 2 through 6 above.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings