BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ESCONDIDO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2021110186

# ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

APRIL 1, 2022

On March 10, 2022, the Office of Administrative Hearings, or OAH, granted Student's motion to amend Student's complaint. On March 25, 2022, Escondido Union School District filed a Notice of Insufficiency as to the complaint, arguing that none of Student's seven issues as set forth in the amended complaint were pled with sufficient specificity. Further, Escondido claimed that Student failed to allege any facts which would toll the statute of limitations for Issues One, Four, Five, Six and Seven.

## 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.)

A request for due process hearing shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (Ed Code § 56505; 20 U.S.C. § 1415(f)(3)(C).) The time period does not apply if the parent was prevented from requesting a hearing because of either (1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the request; or (2) the withholding of information by the local educational agency from the parent that was required to be provided to the parent (Ed. Code § 56505.)

## DISCUSSION

Issue One alleged that Escondido denied Student a FAPE by failing to provide accurate present levels, measurable goals in all areas of need, and appropriate placement, services, supports and/or accommodations in the September 17, 2019 IEP as amended on November 6, 2019 and on February 4, 2020.

Further, the complaint was clear that a portion of this claim predates the statutory two-year period. Escondido cited to no binding authority that a complaint should include facts about why the statutory two-year period should not apply. The pleading should be liberally construed in light of the broad remedial purposes of the IDEA. Issue One was sufficiently pled to put Escondido on notice as to the basis of Student's claims and to permit Escondido to respond and participate in a resolution session and mediation.

Issue Two alleged that Escondido denied Student a FAPE by failing to hold an annual IEP team meeting in September 2020. Student's complaint specified Escondido's

alleged failure, and the date when the failure occurred. The issue was specific enough to provide an understanding of the allegation and was sufficient.

Issue Three alleged that Escondido denied Student a FAPE by failing to draft, complete, and implement a new annual IEP by September 16, 2020. Student's complaint specified what Escondido allegedly failed to do, and the date by which Student alleged Escondido should have done it. The issue was specific enough to provide an understanding of the allegation and is sufficient.

Issue Four alleged that Escondido denied Student a FAPE by placing Student in a special day class with a modified curriculum and no access to general education curriculum, from September 17, 2019 through December 2, 2020. Student's complaint specified the conduct that lead to an alleged denial of FAPE, and the time period in which it occurred. Further, the complaint was clear that a portion of this claim predated the statutory two-year period. The pleading should be liberally construed in light of the broad remedial purposes of the IDEA. The issue was specific enough to provide an understanding of the allegation and is sufficient.

Issue Five alleged that Escondido denied Student a FAPE by failing to assess in all areas of suspected disability. Student's complaint described a problem related to the evaluation of Student and would permit Escondido to respond and participate in a resolution session and mediation. Issue Five is sufficient.

Issue Six alleged that Escondido denied Student a FAPE by failing to provide Student's "foster parent/educational advocate/educational rights holder" progress notes on goals for the 2019-2020 school year, thus denying participation in the IEP process. Student's complaint identifies a problem with communication regarding goals, a list of individuals that should have received progress notes, and the time period during which

they should have received them. Further, the complaint was clear that a portion of this claim predates the statutory two-year period. The pleading should be liberally construed in light of the broad remedial purposes of the IDEA. Issue Six is sufficient.

Issue Seven alleged that Escondido denied Student a FAPE by failing to find Student eligible for special education under the category of Specific Learning Disability. Student sufficiently identified a problem with the identification of Student. Issue Seven was sufficiently pled to put Escondido on notice as to the basis of Student's claim and to permit Escondido to respond and participate in a resolution session and mediation.

Student's proposed resolutions requests included appropriate placement, supports, services, and/or accommodations, compensatory education services, independent education evaluations. A complaint is required to conclude 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).) and Student has met this requirement.

In its notice of insufficiency, Escondido moved, in the alternative, to dismiss Student's Issues One, Four, Five, Six and Seven. As this is an Order on a notice of insufficiency, no motion to dismiss is addressed here.

## 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.

## IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings