BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MODESTO CITY SCHOOLS.

OAH CASE NUMBER 2022070237

# ORDER FINDING DUE PROCESS COMPLAINT INSUFFICIENT IN PART

JULY 28, 2022

On July 8, 2022, at 4:47 PM, 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 Modesto City Schools. On July 27, 2022, Modesto filed a notice of insufficiency, in part, as to the complaint.

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).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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, called a FAPE; (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 and 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.)

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was

prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

Student's complaint was filed on July 8, 2022, but the sworn declaration of Modesto's senior director of special education establishes that Modesto received only eleven of 60 pages by unconsented to fax service on July 8, 2022, shortly before midnight, and did not receive a complete copy of the complaint until July 12, 2022, by mail. Accordingly, Modesto's notice of insufficiency was filed within 15 days of receipt of the complaint, and is timely.

Student's complaint includes 11 claims, of which Issues 1, 2, 3 and 5 allege denials of FAPE for actions or inaction by Modesto from March 2020 through the end of the 2020-2021 or 2021-2022 school year. Those portions of Student's Issues 1, 2, 3 and 5 based on conduct by Modesto preceding July 8, 2020, that is, from March 1, 2020, through July 7, 2020, arose more than two years prior to the filing of Student's complaint and are barred by the statute of limitations. Student does not allege an exception to the statute of limitations as to those claims. Accordingly, Student's Issues 1, 2, 3 and 5 are insufficiently pleaded to state claims under the IDEA and state law preceding July 8, 2020.

## ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to those portions of Issues 1, 2, 3 and 5 alleging claims preceding July 8, 2020.

2. Student will be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II). The filing of an amended complaint will restart the applicable timelines for a due process hearing.
3. The amended complaint must comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and must be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, all claims in Issues 1, 2, 3 and 5 arising prior to July 8, 2020, will be dismissed.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on those claims in Issues 1, 2, 3 and 5 arising on or after July 8, 2020, and the remaining seven issues.

IT IS SO ORDERED.

*Alexa Hohensee*

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings