BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SALINAS UNION HIGH SCHOOL DISTRICT AND

SALINAS CITY ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2020080058

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY SUFFICIENT AS TO ISSUE ONE AND SALINAS CITY ELEMENTARY SCHOOL DISTRICT

AUGUST 21, 2020

On August 3, 2020, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Salinas Union High School District and Salinas City Elementary School District. On August 18, 2020, Salinas City Elementary 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

Student alleges six issues in his complaint. Salinas City Elementary alleges Issues One, Two, Five, and Six are insufficient. Issues Three and Four are not applicable to Salinas City Elementary. Issues Two, Five, and Six are sufficiently pled to put Salinas City Elementary on notice as to the basis of Student's claims. Issue One is partially sufficient.

Student's Issue One alleges Salinas City Elementary failed to provide Student a free appropriate public education during the statutory period that occurred on or before the tolling of the statute of limitations by failing to evaluate, provide appropriate assessments, offer appropriate services, and find him eligible for special education services. Salinas City Elementary alleges Issues One is insufficient because Student does not provide a specific time frame and does not provide any facts as to its child find violation, insufficiencies with the assessment, or why Student believes speech and communication was an area of need. Student does not specifically state the time period in question. Student alleges an exception to the two-year statute of limitations and starts the factual allegation section of his complaint with his fifth grade year, the 2016-2017 school year. Student provides sufficient facts related to the issue during the 2016-2017 and 2017-2018 school years, however, Student does not provide any facts prior to the 2016-2017 school year. Therefore, the issue is insufficient as to any claim prior to the 2016-2017 school year.

Issue Two alleges Salinas City Elementary denied Student a free appropriate public education during the 2017-2018 school year by failing to evaluate Student. Salinas City Elementary alleges this is insufficient because Student fails to identify any

facts as to why it should have had reasonable suspicion that Student had a disability that required special education services. Student alleges he provided Salinas City Elementary with an updated doctor's note indicating his hearing was worsening and he struggled understanding class discussions, staying focused, and completing assignments. Student provided adequate facts about the problem to permit Salinas City Elementary to respond and participate in a resolution session and mediation.

Student's Issue Five alleges Salinas City Elementary committed various procedural violations by failing to translate individualized education program documents and depriving Parents of an opportunity to meaningfully participate in the individualized education program team meeting process. Salinas City Elementary alleges this is insufficient because Student fails to specify the specific timeframe and does not define what "other vital documents" Student alleges were not translated. Although Student does not specifically state the timeframe in question, he alleges Salinas City Elementary did not assess him until the 2016-2017 school year. In reading the complaint as a whole, Salinas City Elementary should be able to understand what individualized education program documents were not translated into Parents' native language. Student provided adequate facts about the problem to permit Salinas City Elementary to respond and participate in a resolution session and mediation.

Student's Issue Six alleges violations under Section 504 and the Americans with Disabilities Act for failure to provide appropriate supports and services under section 504; discrimination based on disability; and reckless disregard for Petitioner's rights and entitlements. Salinas City Elementary alleges this is insufficient because Student fails to state the applicable timeframe and fails to identify any facts related to the issue. Student alleges facts related to Salinas City Elementary's failure to provide services. Student provided adequate facts about the problem to permit Salinas City Elementary to

respond and participate in a resolution session and mediation. Salinas City Elementary's objection to Issue Six would be more appropriately addressed in a motion to dismiss for lack of jurisdiction.

Student's proposed resolutions request compensatory education from Salinas City Elementary as well as training for its staff. A complaint is required to include 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).) The proposed resolutions stated in Student's complaint are well-defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues Two, Five, and Six of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue One of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D), as to the timeframe. Issue One is limited to the 2016-2017 and 2017-2018 school years.
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II), if he intended Issue One to allege violations prior to the 2016-2017 school year.
4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed on Issues Two, Three, Four, Five, and Six of Student's complaint as pled and Issue One as to the 2016-2017 and 2017-2018 school years.

DocuSigned by:
Linda Johnson
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Linda Johnson

Administrative Law Judge

Office of Administrative Hearings