BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SALINAS CITY ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2022070253

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

JULY 19, 2022

On July 11, 2022 Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Salinas City Elementary School District. Salina Unified School District is called Salinas City. On July 14, 2022, Salina City 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 has presented factual allegations commencing with Student's preschool education in 2013, and each year thereafter. Each of Student's five issues incorporates by reference each and every factual allegation relating back to 2013. Student's complaint, however, fails to make a claim of an exception to the two-year statute of limitations and further fails to allege a factual basis for an exception as required by Education Code, section 56505(l).

As a result, Student's complaint alleges five issues, some are sufficient, and some are insufficient. Each issue is discussed below. In this discussion, a free appropriate public education is called a FAPE. An individualized education program is called an IEP.

ISSUE ONE

Issue One alleges for the 2020-2021 and 2021-2022 school years Salinas City (1) failed to write measurable, appropriate, and ambitious goals; (2) failed to provide annual goals in all areas of need; (3) failed to provide sufficient and appropriate related services; and (4) failed to provide Student an appropriate placement.

To the extent Student alleges factual claims prior to the two-year statute of limitations which commenced on July 10, 2020, Issue One, is insufficient. As stated above, Student's complaint alleges facts relating back as far as 2013, yet at no point does Student offer any support for an exception to the statute.

The remaining portion of Issue One is sufficient based upon the factual claims contained in paragraphs 28, through 56 of Student's complaint. The ALJ concurs with Salinas City that by incorporating each and every factual allegation in each issue, Student's complaint is over-reaching and redundant, however that is not the legal

standard for determining the sufficiency of a complaint. Student's Issue One, commencing as of July 10, 2020, is sufficiently plead to put Salinas City on notice as to the basis of Student's claims.

ISSUE TWO

Issue Two contends Salinas City (1) failed to properly advise Parent about the continuum of educational placements and available services; (2) failed to provide written notice when refusing any of parents requests for assistance, including but not limited to evaluations and repeated concerns for curriculum related materials. Issue Two, part one and part two, fails to identify specific events, dates, or time frame in which the alleged violation occurred.

Issue Two also contends Salinas City failed to offer an IEP that provided appropriate special education and related services, ranging from assistive technology to psychological services to unidentified supplementary aids and services. In addition to failing to identify a specific time frame or specific IEP documents and offers of FAPE, Issue Two fails to provide a factual basis to identify a need for such services and supports and fails to indicate what specific supports were required. Therefore, Issue Two, is vague as to time and unclear in content as it failed to include adequate facts to identify the time frame, documents, and related factual supports for Student's claims. Issue Two is insufficient in its entirety.

ISSUE THREE

Issue Three alleges Salinas City failed to conduct appropriate assessments in its 2018 and 2021 triennial assessments. Student failed to allege a factual basis for an exception to the two-year statute of limitations in this matter, therefore that portion of Issue Three relating to the 2018 triennial assessments is insufficient. The remainder of

Issue Three as it relates to the 2021 triennial assessments contains sufficient factual claims as are contained in paragraphs 31 through 41. Therefore, Issue Three, commencing on July 10, 2020, is sufficiently plead to put Salinas City on notice as to the basis of Student's claims.

ISSUE FOUR

Issue Four alleges violations due to the COVID-19 pandemic. Student alleged the COVID-19 violation commencing in March 2020. Again, based upon the statute of limitations, Issue Four is insufficient prior to July 10, 2020. The remainder of Issue Four claims allege Student required in-person academic, social/emotional, and or/behavioral services during the pandemic. Although Student did not include specific factual claims in Issue Four, Student realleged and incorporated paragraphs 28 through 56, which contained sufficient information to provide "an awareness and understanding of the issues forming the basis of the complaint." Therefore, Issue Four, commencing on July 10, 2020, is sufficiently plead.

ISSUE FIVE

Issue Five alleges Salinas City predetermined Student's placement in a special day class and predetermined Student's services by failing to consider Parent and grandparent's repeated concerns. Student has incorporated all 77 paragraphs of alleged facts contained in the complaint, back to 2013, yet Student failed to identify which IEPs are alleged as predetermined. Student alleges placement options should have been discussed but provided no information to support that conclusion. Therefore, Issue Five, in its entirety is insufficient.

ORDER

1. Issues One, Three, and Four of the complaint, commencing as of July 10, 2020 are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues Two and Five of the complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
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 only on Issues One, Three and Four in Student's complaint.

IT IS SO ORDERED.

Judith Pasewark

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings