BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

VALLEJO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024060702

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY SUFFICIENT AND PARTIALLY INSUFFICIENT

JULY 3, 2024

On June 19, 2024, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Vallejo City Unified School District, called Vallejo. On July 2, 2024, Vallejo filed a notice of insufficiency 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).

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 46540-46541, 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.

California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action. That is, the claim accrues when the parent knows that the education provided is inadequate, and not when the parent understands a claim occurred. (*M.M. & E.M. v. Lafayette School Dist*. (N.D.Cal., Feb. 7, 2012 Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, ** 17 – 19, affd.in part and revd. in part on other grounds by *M.M. v. Lafayette School Dist*., et al (9th Cir. 2014) 767 F.3d 842, 859.)

It does not matter if the parent understood that the inadequacy was a legal claim, what is material is the fact that the parent had knowledge of the problem. Congress intended to obtain timely and appropriate education for special-needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Student v. Brea Olinda Unified School Dist*. OAH Case No. 2009050815, quoting *Alexopulous v. San Francisco Unified School Dist*. (9th Cir. 1987) 817 F.2d 551, 555.)

Student's complaint was filed on June 19, 2024. Claims arising before June 19, 2022, or during the 2021-2022 school year, are barred unless an exception to the statute of limitations applies.

The complaint alleges Parent made requests for Student to be assessed in 2021-2022, indicating Parent knew or should have known Student had unidentified and unaddressed educational needs at that time. To plead an exception to the statute of limitations, the complaint includes vague and conclusory allegations in a separate section entitled Statute of Limitations, including:

- Vallejo misrepresented to Parents Student could only receive special education services in Vallejo and did not have any other placement offers,

- Vallejo withheld records and information from Parent to force her to feel Vallejo was the only placement for Student,

- Vallejo's assessments inaccurately suggested improvement in Student's performance,

- Vallejo failed to comprehensively assess Student in the 2021-2022 school year although Student was not making progress on his IEP, depriving Parent of knowledge about Student's actual performance,

- Vallejo failed to comply with statutory timelines,

- Vallejo withheld information on an appropriate program, services, and placement for Student, and

- Parent reasonably relied on Vallejo's misrepresentations and did not know the basis of her claims until Parent retained an attorney.

None of these conclusory statements are supported by factual allegations that indicate Parent was prevented from filing a request for due process because of specific misrepresentations by Vallejo it had resolved the problem forming the basis of the complaint, or that it withheld information from Parent that was required to be provided to Parent before June 19, 2022.

In the statement of facts section of the complaint, for the 2021-2022 school year, the complaint alleges that Vallejo failed to provide speech services for one-half of the school year, did not offer speech services for the 2022 extended school year, changed services without Parent's consent, failed to communicate with Parent, and did not perform an assistive technology assessment. Student alleges Parent's concerns about Vallejo's shortcomings were ignored by the April 26, 2022 IEP team. Although each of

these actions or inactions were arguably violations of the IDEA, none were misrepresentations to Parent or the withholding of information required to be provided to Parent.

Student's undated and conclusory allegations regarding the statute of limitations later in the complaint do not cure the lack of factual support for an exception to the statute of limitations. Accordingly, Student fails to allege sufficient facts to state claims pre-dating June 19, 2022.

As to later claims, Student's statement of facts recited long and detailed summaries of Student's alleged needs, but few specifics about Vallejo's actions or inactions as the basis of Student's nine claims. Broad statements that Vallejo's educational approach was falling short, or Vallejo needed to take immediate action, were vague and insufficient to provide Vallejo with an awareness of how Student's program was falling short, or what action Student contends Vallejo should have taken. Much of the statement of facts gave the impression of being a template not specific to Student.

The complaint itself skips from the April 26, 2022 IEP, which is outside of the statute of limitations, to the April 11, 2023 IEP, alleging in between only broad, non-specific statements like:

> Vallejo failed to follow Student's IEP, failed to provide services, denied Parent input, and Student made no actual progress. Student's educational journey has been a challenging one, marked by Vallejo's failure to provide the necessary services and adhere to his IEP. Despite his active engagement and hard work to earn free time, his interests in nature,

animals, and affinity for Pokémon characters, Student's academic progress has been hindered by Vallejo's shortcomings.

Such conclusory statements are devoid of factual allegations regarding the 2022-2023 school year. However, the lack of facts in the statement of facts was generally remedied with allegations of additional facts under the specific issue headings.

At Issue 1, Student alleges Vallejo failed to produce a complete set of Student's educational records for the 2023-2024 school year at Parent's request. This is enough information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 1. Issue 1 is sufficient.

At Issue 2, the complaint alleges that Vallejo failed to timely assess Student in all areas of suspected disability, or to provide prior written notice of its denial of Parent's requests for assessment in the 2021-2022, 2022-2023, and 2023-2024 school years. At Issue 2, Student alleges specific unidentified needs that made him unable to access his education, and the specific assessments Student contends should have been completed. The complaint alleges insufficient facts regarding an exception to the statute of limitations to support a claim at Issue 2 arising before June 19, 2022. The complaint alleges sufficient information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 2 on or after June 19, 2022.

At Issue 3, the complaint alleges that Vallejo failed to timely hold an IEP team meeting for Student's transition into Vallejo in August 2021, and convened a late IEP team meeting for the annual review of Student's IEP in May 2024. The complaint alleges insufficient facts regarding an exception to the statute of limitations to support a claim regarding the transition IEP in fall 2021. The complaint alleges sufficient information to

give Vallejo an awareness and understanding of the issues forming the basis of Issue 3 as to an untimely annual review IEP team meeting in May 2024.

At Issue 4, the complaint states no more than vague and conclusory allegations that Vallejo failed to deliver and implement Student's IEPs during the 2021-2022, 2022-2023, and 2023-2024 school years. Issue 4 does not allege additional facts, instead stating Vallejo failed to implement Student's IEP "as pled throughout this complaint." However, the complaint does not elsewhere allege any specific facts about a failure to implement Student's IEP beyond the 2021-2022 school year, for which insufficient facts were pled to support an exception to the statute of limitations. Student vaguely alleges that his teacher did not follow the November 1, 2023 IEP but does not allege how or when the teacher failed to implement the IEP. Student vaguely alleges Vallejo sporadically provided services and did not work on goals, but does not specify which services or goals were not implemented or when these failures occurred.

Student's allegations create a vague and confusing complaint. Such broad conclusory allegations, spanning three years without any specificity, are precisely the type that must be prevented to promote fairness. The complaint must provide Vallejo with sufficient information to know how to prepare for the hearing and how to participate in a resolution session and mediation on each claim. Issue 4 is insufficient.

At Issue 5, the complaint alleges that Vallejo failed to timely convene an IEP team meeting upon Parent's request on September 14, 2023. These facts are sufficient to give Vallejo an awareness and understanding of the issue forming the basis of Issue 5. Issue 5 is sufficient.

At Issue 6, the complaint alleges that the IEP teams ignored Parent's input during the 2021-2022, 2022-2023, and 2023-2024 school years. The complaint alleges the

specific facts regarding input Parent provided at each IEP team meeting, and that Vallejo unilaterally determined Student's educational program without meaningfully engaging Parent in the IEP process. The complaint alleges insufficient facts regarding an exception to the statute of limitations to support a claim at Issue 6 for claims arising before June 19, 2022. The complaint alleges sufficient information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 6, as to claims arising on or after June 19, 2022.

At Issue 7, Student alleges that Vallejo denied him a FAPE during the 2021-2022, 2022-2023, and 2023-2024 school years because Student did not make more than minimal progress and regressed academically. The complaint clearly alleges that Student did not make progress on his IEP goals each year and failed to make one year of progress in academics for each year in school. The complaint alleges insufficient facts regarding an exception to the statute of limitations to support a claim at Issue 7 for claims arising before June 19, 2022. The complaint alleges sufficient information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 7, as to claims arising on or after June 19, 2022.

At Issue 8, the complaint alleges that Vallejo denied Student a FAPE by not addressing Student's autism, attention deficit hyperactivity disorder, called ADHD, and anxiety needs by offering him an appropriate program in the 2021-2022, 2022-2023, and 2023-2024 school years. Specifically, the complaint alleges that Student's records and Parent report indicated that anxiety was an area of suspected disability and Student needed accommodations for his mental health, in addition to behavioral and speech services addressing anxiety, autism, and ADHD. Here, Student is specific in identifying services that should have been offered. The complaint alleges insufficient facts regarding an exception to the statute of limitations to support a claim at Issue 8 for

claims arising before June 19, 2022. The complaint alleges sufficient information to give Vallejo an awareness and understanding of the issues forming the basis of Issue 8, as to claims arising on or after June 19, 2022.

At Issue 9, Student alleges that Vallejo's actions violated Student's rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Americans with Disability Act (42 U.S.C. §§ 12101, et seq.), Title VI, and other civil rights statutes. A party has the right to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a)), and the jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to decide the claims alleged at Issue 9, and Issue 9 fails to allege sufficient facts to state a claim under the IDEA.

ORDER

1. Issues 4 and 9 are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
2. Issues 2, 3, 6, 7, and 8 are insufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to claims arising before June 19, 2022.
3. Issues 1 and 6 are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
4. Issues 2, 3, 6, 7, and 8 are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii) as to claims arising on or after June 19, 2022.
5. Student will be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).

6. The amended complaint must comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii) and must 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.
7. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2, 3, 5, 6, 7, and 8 as to claims arising on or after June 19, 2022.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings