BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SANTA ROSA ACADEMY.

OAH CASE NUMBER 2020100169

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

NOVEMBER 17, 2020

On October 5, 2020, 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 Santa Rosa Academy. On October 7, 2020, Santa Rosa Academy filed a notice of insufficiency as to the complaint. On October 8, 2020, OAH found Student's complaint to be insufficient and gave Student 14 days to file a legally sufficient amended complaint.

On October 15, 2020, Student filed an amended complaint. On October 21, 2020, Santa Rosa filed a timely notice of insufficiency as to the amended complaint. On

October 23, 2020, OAH found Student's amended complaint to be insufficient and gave Student 14 days to file a legally sufficient second amended complaint.

On November 9, 2020, Student filed a second amended complaint. On November 16, 2020, Santa Rosa filed a timely notice of insufficiency as to the amended 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).

The Individuals with Disabilities Education Act is referred to as the IDEA. An Individualized Education Program is referred to as an IEP.

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's second amended complaint is substantially similar to Student's original and amended complaints, which OAH previously found insufficient. To create the second amended complaint, Parent filed the amended complaint with the addition of several handwritten notes with arrows to denote the additions in the second amended complaint. While these notes do add additional facts that suggest some connection to actionable claims under the IDEA, the second amended complaint is impermissibly vague and confusing. Student is strongly encouraged to contact OAH to request the assistance of a mediator in the event Student chooses to file a third amended complaint.

Student's second amended complaint alleges three claims, which are insufficiently pled. The amended complaint alleges violations of various privacy and civil rights laws, primarily against Parent, but fails to allege claims related to proposed changes regarding Student's identification, evaluation, or educational placement, or

provision of a FAPE under the Individuals with Disabilities Education Act (20 U.S.C § 1400, et seq.) and related State special education laws.

Student vaguely alleges at Issue 1 that Santa Rosa violated the IDEA by failing to provide a FAPE to Student in regard to Parent assistance and communication on behalf of her son. The second amended complaint also alleges at Issue 1 that various Santa Rosa staff and school board members failed to respond to public records requests, disregarded the Americans with Disabilities Act, breached the privacy requirements of the Health Insurance Portability and Accountability Act, committed libel and defamation against Parent, and violated the Brown Act, none of which are special education laws.

In the second amended complaint, Parent added an additional comment next to Issue 1 stating "Per supplementary aides – the trespass notice forbids my ability to provide per IEP." Parent also wrote next to this issue: "Please see correspondence they sent me proving denial of ability to provide FAPE/IDEA an based on their LIES." Parent attached several documents to the amended complaint, including a trespass notice dated September 30, 2020, from Santa Rosa's attorneys to Parent. In the letter, Santa Rosa imposed severe restrictions on Parent's ability to enter the school campus or communicate with school staff. Santa Rosa stated that Parent may not communicate with any school staff except for written communications to the Executive Director. Parent added a handwritten note next to that provision, stating "ALL violates FAPE & IDEA." She also added at the top of the trespass notice: "This violates ALL IEP's/504 plans as I am homeschool parent/teacher."

Parent's handwritten notes, taken as a whole and liberally construed, suggest Parent may be alleging that the trespass notice denied her the ability to participate in Student's IEP process, or denied Student a FAPE, or led to a failure to implement Student's IEP. However, even with the most generous interpretation it remains unclear.

Issue 1 in Student's second amended complaint is therefore impermissibly vague and fails to provide Santa Rosa "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.)

The second amended complaint alleges at Issue 2 that Santa Rosa discriminated against Parent as to Parent's implementation of Student's IEP, at home. The margin notes indicate that there was prior litigation that was settled, without further facts regarding Student or his education. Parent added the following comment next to Issue 2: "Per program accommodations of IEP amendment of 9/21/20, I am unable to provide FAPE per the falsified 'trespass notice' dated '9/30/20'." Issue 2 of the second amended complaint remains confusing and impermissibly vague.

Student alleges at Issue 3 of the second amended complaint that Santa Rosa school board members retaliated against Parent for petitioning the board members' recall. The margin notes add that Santa Rosa did not respond to a public records request, and that Parent was escorted when on campus to have Student's computer fixed. In the second amended complaint, Parent added next to Issue 3: "Per IEP amendment dated '9/21/20' I am unable to provide modifications and/or supports per trespass notice dated 9/30/20." As with Issues 1 and 2, Parent refers to a specific IEP document and the trespass notice but does not raise sufficient facts to connect these into a legally cognizable claim.

With respect to Issue 1, 2 and 3, Student has failed to state sufficient facts supporting these claims, and the second amended complaint is insufficient in its entirety.

A parent without an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a

complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's second amended complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file a third amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The third 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. In the event Parent files a third amended complaint after the 14-day deadline in this Order, Santa Rosa may move to dismiss Student's case in its entirety.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Cararea Lucier

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings