BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

SAN JOSE UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2021050178

# ORDER FINDING DUE PROCESS COMPLAINT SUFFICIENT

MAY 10, 2021

On May 6, 2021, San Jose Unified School District filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Parents on behalf of Student. On May 7, 2021, Student filed a notice of insufficiency as to the complaint. On May 10, 2021, San Jose filed, and served on Student, a reformatted copy of 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 includes three things. One, a description of 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. Two, facts about the problem. And three, 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

San Jose's complaint alleges that it convened an individualized education program, or IEP, team meeting on November 4, 2020, to complete a review of Student's IEP and made an offer of FAPE. The offer of FAPE was documented in the IEP document dated October 15, 2020. The complaint also alleges that San Jose has unsuccessfully attempted to obtain Parent's consent to an assessment plan dated March 26, 2021. This assessment plan was drafted in light of Parent's report of Student's difficulties with social and emotional functioning. The complaint alleges two claims, seeking a determination that the November 4, 2020 offer of special education and related services offered a FAPE, and that San Jose may assess Student without parental consent.

The original complaint filed with OAH was formatted in such a way that it was unreadable, prompting Student's notice of insufficiency. That problem has been resolved by the filing with OAH, and service on Student, of a reformatted copy.

The facts alleged in San Jose's complaint are sufficient. San Jose's complaint identifies the issues and adequate facts about the problem to permit Student to respond.

Therefore, San Jose's statement of the two claims is sufficient.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings