

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA ROSA CITY SCHOOLS.

OAH CASE NO. 2014100519

ORDER PARTIALLY GRANTING
NOTICE OF INSUFFICIENCY WITH
LEAVE TO AMEND

On October 10, 2014 Student's Educational Rights Holder and mother filed a Due Process Hearing Request¹ (complaint) on Student's behalf naming Santa Rosa City Schools. On October 10, 2014, Santa Rosa timely filed a notice of insufficiency (NOI) as to the complaint. For the reasons discussed below, the NOI is partially granted and Student is granted leave to amend the complaint

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² 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 contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ 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.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint alleges that she is 21 years and 2 months old; she is eligible for special education under the category of speech and language and other health impairment; her mother has held her educational rights as of July 2012; and her last agreed upon individualized education program was in February 2011. Student contends her last agreed upon placement was Anova School and specifically ACE High School, a school for predominately high functioning autistic teenagers, despite the fact that Student has never been diagnosed autistic. Student further alleges that is in the tenth grade and she lacks 126 units to graduate from high school.

The complaint alleges historical facts dating back to Student’s elementary school years and through her enrollment at Santa Rosa and ACE High School. She then alleges that, in or about February 2012, Mother, who had begun tutoring Student, discovered that Student was not making sufficient educational progress. Mother requested that Santa Rosa hold an emergency IEP and the complaint contends that Mother and Student were not available on the dates offered by Santa Rosa. In August 2012, Mother again requested an IEP before the start of the 2012-2013 school year, which Santa Rosa did not schedule until February 2014.

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Student stopped attending school in September 2012, and Santa Rosa did not follow up or offer dates available to Parent or Student or a telephonic IEP during that time frame.

Student's complaint alleges fifteen "problems," each of which is supported by factual allegations in addition to the general factual allegations summarized above. Student seeks compensatory educational services, including speech therapy, occupational therapy, tutoring and other supports, as a proposed resolution. Santa Rosa contends in its NOI that, without specificity as to any problem except parenthetical reference to Problem 7, the complaint generally fails to state claims sufficient for Santa Rosa to prepare for resolution session, mediation and a due process hearing.

Based upon a reading of the entire complaint, Student has sufficiently pleaded the following issues, which encompass the individual problems articulated in the complaint and are therefore restated for clarity:

Did Santa Rosa deny Student a free appropriate public education from February 2012 through October 10, 2014⁸, by:

1) Failing to obtain appropriate informed consent from Student to her February 2012 IEP;

2) Failing to hold an IEP meeting for Student with all required IEP team members, and by failing to develop and offer to Student an appropriate individualized educational program, including an appropriate placement and services, to address her unique needs;

3) Failing to provide Student, or her educational rights holder, prior written notice including regarding eligibility and placement;

4) Failing to assess Student in all areas of suspected need in preparation for her 2013 triennial IEP;

5) Predetermining placement offers for Student without holding an IEP meeting, thereby depriving Student and her educational rights holder the opportunity to meaningfully participate in the development of her educational program; and

6) Failing to offer or provide Student with an appropriate transition plan?

Each of the above issues incorporate facts and problems alleged in the complaint and are sufficient to put Santa Rosa on notice of the issues forming the basis of the complaint and the proposed resolutions, such that Santa Rosa can respond to the complaint and participate in a resolution session, mediation, and due process hearing.

⁸ This Order does not address any potential statute of limitations defense Santa Rosa may have to some or all of the claims alleged.

Student's issues identified as Problems 6 and 7 are not sufficiently pleaded. Problem 6 alleges that Santa Rosa failed to monitor Student's daily seizures "in her second year" as a result damaging her physical and psychological health. The claim does not sufficiently specify, when read in the context of the entire complaint, when Santa Rosa failed to monitor Student, or how and when the alleged failure impacted her ability to access her education. Student will be granted leave to amend this claim if she so chooses, which can be added as Issue 7 to the sufficient issues listed above.

Similarly, Problem 7 of the complaint claims Student was bullied and that Santa Rosa failed to address the problem. This problem is insufficiently pleaded because it does not specify when the bullying occurred, if it occurred on more than one occasion, where it occurred, and how it impacted Student's ability to access her education. The facts asserted in this problem relate back to Student's claim that Santa Rosa treated her as if it had changed her eligibility from speech and language impaired to emotionally disturbed, and that she was in an inappropriate placement, which is covered by Issues 1 and 2, above. Student will be granted leave to amend this claim providing she alleges sufficient facts to support a claim that bullying incidents had a direct impact on the identification, evaluation, or educational placement of Student, or the provision of a FAPE. The new issue shall be consecutively numbered in the context of the sufficient issues listed above.

In summary, the complaint is sufficiently pleaded as to Issues 1 through 6 as articulated above, without regard to any defenses Santa Rosa may have as to the applicable statute of limitations. Problems 6 and 7, as identified in the complaint, are insufficiently pleaded and Student may amend the complaint as to these issues if she chooses to do so. Student's proposed resolutions are sufficiently pleaded.

Education Code section 56505 provides that a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH at (916) 263-0880 for assistance in amending their due process hearing request.

ORDER

1. Issues 1 through 6, as identified in this Order, of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. Problems 6 and 7, as identified in 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).⁹

4. The amended complaint shall comply with the requirements of title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 calendar days from the date of this order.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1 through 6, as identified in this Order.

DATE: October 22, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.