

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021060491

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE
PROCESS COMPLAINT

JUNE 30, 2021

On June 14, 2021, 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 Pajaro Valley Unified School District. On June 29, 2021, Pajaro Valley 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 Individuals with Disabilities Education Act, referred to as 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 attorney alleges five insufficiently pled claims in the complaint. Issue One is insufficiently pled. Labeled as "Issue 1 Substantive Violation," it alleges that Pajaro Valley "failed to recognize Student's sensory processing deficits, expressive and language deficits, and executive functioning deficits for the 2019-2020 and 2020-2021 school years" but omits any connection between the "failure to recognize" and Student's receipt of a substantive free appropriate public education, referred to as FAPE. The facts throughout the complaint are vague, and do not provide clarity as to this issue. Issue One then cites to 34 C.F.R. part 300.8, subdivision (c) and California Code of Regulations, title 5, section 3030, subdivision (a). These two regulations list the eligibility criteria for special education and related services, making it ambiguous if Student is raising eligibility as a concern within this issue. Student's attorney added a subsection (a) to Issue One, alleging "District had a responsibility to meet Student's social and behavioral need and declined to do so." It is unclear if Student is alleging that "social and behavioral needs" encompass the areas of sensory processing deficits, expressive and language deficits, and executive functioning deficits, or if this is an additional, separate claim.

Student's complaint includes two issues labeled "Issue 4." The first Issue Four begins:

"District denied Student a FAPE for the 2019-2020 and 2020-2021 school years and failed to ensure that he would have access to his education and receive educational benefit by failing to make an offer of FAPE available to Student thereby failing to offer appropriate specialized instruction, appropriate placement, and related services for Student that would meet his unique needs and provide him with educational benefit when it failed

to make him eligible for special education services [sic] See 20 U.S.C. §1400(a); Cal. Educ. Code §56000; 5 C.C.R. §3001(p); Board of Education v. Rowley, 458 U.S. 176, 200, (1982).” (Emphasis added.)

This Issue is contradicted by the facts in the complaint, which refer to Student remaining eligible for special education under the category of Speech or Language Impairment, and Pajaro Valley continuing to offer Student an IEP dated November 23, 2020.

The first Issue 4 then becomes more confusing by making numerous other broad legal allegations, many of which are not supported by any relevant facts in the complaint. For example, the first Issue 4 states: “This issue also includes Respondent’s failure to adequately evaluate, identify, and devise appropriate IEPs” This allegation is confusing as it may be omitting key words, or it may reflect Student’s theory of Pajaro Valley’s legal obligations. The Issue also includes allegations that Pajaro Valley failed to comply with “Child Find” requirements, failed to evaluate Student within a reasonable amount of time, and failed to train teachers and staff, but the complaint does not include facts relevant to these claims. The Issue also states that Student is eligible under the categories of Other Health Impaired and Autism, but is unclear as to whether Student is raising a legal issue or alleging facts in support of the broader Issue. Overall, the first Issue 4 is insufficiently pled because it fails to provide Pajaro Valley with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

Issues Two, Three, and the second Issue Four are duplicative and contradictory. Issue Two alleges that Pajaro Valley failed to conduct valid assessments for an undefined period of time. Issue Three alleges that Pajaro Valley “failed to conduct assessments in any areas for the 2019-2020 and 2020-2021 school years.” The second Issue Four

alleges: "The District failed to conduct valid assessments and conducted all of Student's assessments virtually." It cannot be true that Pajaro Valley both conducted invalid assessments and did not conduct any assessments at all during the relevant time period. The facts in the complaint muddy these issues further because they discuss some assessments prior to the statute of limitations, as well as other undated assessments, which may or may not have occurred during the 2019-2020 and 2020-2021 school years. Issues Two, Three, and the second Issue Four are therefore insufficiently pled.

Overall, the complaint fails to provide Pajaro Valley with the required problem description and the facts relating to the problem. Although the 14-page document includes some facts, law, and legal arguments, they are loosely related to each other and are more a stream of consciousness listing of events and legal contentions. Additionally, the complaint is vague and contradictory such that it fails to provide Pajaro Valley with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

ORDER

1. Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. 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.

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