

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
EDUCATIONAL RIGHTS HOLDER ON BEHALF OF STUDENT,

v.

SAN DIEGO COUNTY OFFICE OF EDUCATION AND  
GROSSMONT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2022010459

ORDER OF DETERMINATION OF INSUFFICIENCY OF  
DUE PROCESS COMPLAINT AS TO  
GROSSMONT UNION HIGH SCHOOL DISTRICT

FEBRUARY 2, 2022

On January 13, 2022, Educational Rights Holder on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Diego County Office of Education and Grossmont Union High School District, referred to as Grossmont. Educational Rights Holder is referred to as Petitioner. On January 28, 2022, Grossmont filed a Notice of Insufficiency as to the complaint. On January 28, 2022, San Diego County Office of Education filed a Notice of

Joinder with respect to Issue A only. On January 31, 2022, Student filed a Response to Notice of Insufficiency.

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, 1<sup>st</sup> Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1<sup>st</sup> 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.)

The complaint alleges Student qualifies for special education under the categories of emotional disturbance and other health impairment. Student is a ward of the foster care system and currently is being held at the Kearny Mesa Juvenile Detention Facility. According to the complaint, Student has been placed in more than ten residential placements since 2017 and has a history of eloping and engaging in dangerous behaviors.

Student's complaint generally alleges Grossmont owed Student a free appropriate public education, referred to as FAPE, during the 2020-2021 and 2021-2022 school years because: (1) Student resided in a group home within Grossmont's boundaries for approximately two weeks in October 2020, during which time Grossmont made an offer of FAPE to Student which it failed to implement; and (2) Petitioner resides within Grossmont's boundaries and is Student's educational rights holder effective July 7, 2021 and therefore Grossmont is responsible for providing Student a FAPE.

## PETITIONER PLED SUFFICIENT FACTS DEMONSTRATING SHE HOLDS STUDENT'S EDUCATIONAL RIGHTS

The purpose of the Individuals with Disabilities Education Act, referred to as IDEA (20 U.S.C. § 1400 et seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) 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

free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) 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.)

Education Code section 56501, subdivision (a) provides that the due process hearing procedures, including the right to file a request for due process, extends to a guardian, as defined in section 56028. (Ed. Code, § 56501, subd. (a).) Education Code section 56028 defines a guardian as a “parent” for purposes of special education if the guardian was appointed for the child in accordance with Sections 361 and 726 of the Welfare and Institutions Code. (Ed. Code, § 56028, subd. (a)(3).)

The juvenile court has the authority to assign educational rights to a person other than a student’s biological parents. (Welf. & Inst. Code § 361.) In *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F3d 1052, the Ninth Circuit held that the definition of “parent” in Education Code section 56028 includes “[a] guardian . . . authorized to make educational decisions for [a] child.” (Ed. Code, § 56028(a)(3).) The court also concluded that the definition of a “guardian” includes someone who “was appointed by the juvenile court to have legal authority for making educational decisions on [the student’s] behalf.” (*Id.* at 1061.)

The complaint alleges Petitioner is the sole holder of Student’s educational rights under a court order dated July 7, 2021. Accordingly, Student’s complaint is sufficiently

pled to demonstrate that Petitioner has the authority to make educational decisions on Student's behalf. Any further challenge will need to be done through a motion to dismiss.

Grossmont argues Petitioner is prohibited from holding Student's educational rights based upon her employment with the San Diego Office of the Public Defender. This issue is not the proper subject of a challenge to the sufficiency of the due process complaint, like whether Petitioner is authorized to make education decisions for Student. Further, Grossmont will need to establish if OAH has jurisdiction over a challenge to the appointment of an educational rights holder appointed by the juvenile court.

#### FAILURE TO STATE FACTS SHOWING RESIDENCY WITHIN GROSSMONT'S BOUNDARIES

California law places the primary responsibility for providing special education to eligible children on the local educational agency; usually the school district in which the parent of the child resides. (See, e.g., Ed. Code, §§ 48200, 56300, 56340 [describing local educational agency responsibilities], 56344, subd. (c).) As discussed above, a responsible adult appointed by the court to make educational decisions for a student is a "parent" within the meaning of Education Code section 56028, subd. (3). (*Orange County, supra*, 668 F.3d at 1061.)

However, in California, a county office of education is responsible for the provision of a FAPE to an individual while they are confined to juvenile detention within that county. (Ed. Code, §§ 48645.2, 56150.) Juvenile court schools provide educational services to all students detained in juvenile halls. (Ed. Code, § 48645.1.)

The complaint alleges that Student was placed in the Kearny Mesa Juvenile Detention Facility in April 2018, and subsequently released from Kearny Mesa Juvenile Detention Facility and placed in several residential treatment facilities between July 2018 and December 2019. Student purportedly lived with a family member between December 2019 through August 2020, and then “was sent to a group home in Grossmont” on October 19, 2020. According to the complaint, Student continued to engage in elopement behaviors and was subsequently placed at a group home within the Escondido Union High School District approximately two weeks later on November 4, 2020. Student later was arrested and placed in the Kearny Mesa Juvenile Facility and placed in various other programs. Student currently is in custody at the Kearny Mesa Juvenile Detention facility and attends San Diego County SOAR Academy through the San Diego County Office of Education.

The complaint does not provide Petitioner’s home address, or state during what period of time Petitioner resided within Grossmont’s boundaries. Student’s complaint further fails to state Student’s residence address at the time he allegedly resided within Grossmont’s boundaries in 2020. (20 U.S.C. § 1415(b)(7)(ii)(I).) No address is provided for Student’s “parent”, as defined in section 56028 of the Education Code, or other facts establishing that Grossmont was responsible for providing Student a FAPE during the 2020-2021 school year. Student has not demonstrated why Student’s address within Grossmont boundaries needs to be confidential, such as to a citation to a court order or a law requiring address confidentiality.

Further, according to the complaint, as of May 2021, an individual other than Petitioner was Student’s educational rights holder, and that individual resided within the boundaries of the San Diego Unified School District. Petitioner allegedly did not obtain Student’s educational rights until July 7, 2021. Student was in custody from February 18,

2021 through July 26, 2021, October 29, 2021 through December 15, 2021 and from December 29, 2021 through the present time, during which time Student's educational program was provided by the San Diego County Office of Education. Therefore, the complaint fails to allege facts demonstrating Grossmont owed Student a FAPE during the 2020-2021 and 2021-2022 school years based on Petitioner's or Student's "parent's" residency during the periods Student was not in juvenile hall. Accordingly, the complaint is insufficiently pled and fails to demonstrate Grossmont was the local education agency responsible for providing Student a FAPE.

### FAILURE TO PLEAD SUFFICIENT FACTS SHOWING GROSSMONT WAS INVOLVED IN DECISIONS REGARDING STUDENT'S EDUCATIONAL PROGRAM

The complaint generally alleges Grossmont made an offer of FAPE to Student sometime around October 2020 that included specialized academic instruction, individual and group counseling and speech and language services. The complaint does not identify which school Student attended within Grossmont, or the dates he attended. The complaint does not identify the date of the individualized education program, IEP, whether the offer of FAPE was consented to, or how Grossmont failed to implement Student's IEP. The allegations are vague and insufficient to put Grossmont on notice of the nature of the problem and the facts relating to the problem. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) Accordingly, the complaint is insufficiently pled for this additional reason.

### ORDER

1. Petitioner's complaint is insufficiently pled under section title 20 United States Code section 1415(c)(2)(D) as to Grossmont.

2. Petitioner's complaint is sufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to San Diego County Office of Education.
3. Petitioner shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. 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.
5. If Petitioner fails to file a timely amended complaint, the matter will proceed solely against San Diego County Office of Education.

IT IS SO ORDERED.

*Jennifer Kelly*

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings