

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA VIRTUAL ACADEMIES SONOMA.

OAH CASE NUMBER 2024060371

ORDER DETERMINING DUE PROCESS COMPLAINT
INSUFFICIENT AND ALLOWING STUDENT'S AMENDED
COMPLAINT

JUNE 25, 2024

On June 10, 2024, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming California Virtual Academies Sonoma. On June 24, 2024, California Virtual Academy at Sonoma filed a notice of insufficiency as to the complaint. On June 25, 2024, before OAH issued a ruling on California Virtual Academy's notice of insufficiency, Student filed an amended complaint.

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, called FAPE; (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 Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Board* (M.D.Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Board 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 46540-46541, 46699.)

Student's complaint alleges three issues, all of which are insufficiently pled. Issue 1 alleges there are discrepancies with information in the initial individualized education program, or IEP, report. Student does not explain what the discrepancies are, allege that the discrepancies rendered the report insufficient, or allege the discrepancies resulted in a FAPE denial. Student also alleges the initial IEP report was not given to Parents prior to the IEP team meeting. Again, Student does not offer any explanation as to how that denied Student a FAPE. Although Student provides facts about the IEP report, Student does not allege any information that provides California Virtual Academy with an awareness and understanding of the issue.

Issue 2 alleges Parents expected the process to be handled with an impartial consensus of what Student needed. Student does not explain what he means by the process. Student alleges Parents want Student to be able to communicate his needs and wants but does not allege how California Virtual Academy failed to address his communication needs.

Issue 3 is a chronology of the IEP team meetings and attempts by Student's private speech language pathologist to correct the discrepancies within the initial IEP report. Student again alleges Parents did not receive the IEP report prior to the initial IEP team meeting, but still does not explain how this denied Student a FAPE. Student only alleges it was a waste of time.

Student alleges Parents were supposed to receive the IEP report prior to the initial IEP team meeting and did not. Student also alleges California Virtual Academy did not timely respond to requests to correct discrepancies within the IEP report. However, Student does not allege how any of these failures amounted to a denial of FAPE.

Student did not include any proposed resolutions. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has not met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Student's complaint does not include facts that allow California Virtual Academy to have an awareness and understanding of the issues forming the basis of the complaint. Therefore, Student's initial complaint is insufficient. However, Student filed an amended complaint after California Virtual Academy filed its notice of insufficiency. This Order does not address Student's amended complaint.

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.)

ORDER

1. Student's initial complaint is insufficiently pled under section 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), which Student already filed.
3. Student's amended complaint dated June 25, 2024, shall be deemed filed on the date of this order, and restarts the timelines in the case.

4. All dates previously set in this matter are vacated. OAH will issue a scheduling order with the new dates.

Linda Dowd

Linda Dowd

Administrative Law Judge

Office of Administrative Hearings