BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SANTA ROSA ACADEMY.

OAH CASE NUMBER 2020100137

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

OCTOBER 9, 2020

On October 3, 2020, 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 Santa Rosa Academy. Parent, on behalf of Student, will be referred to as Student. On October 7, 2020, Santa Rosa Academy 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 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 complaint includes three insufficiently pled claims. Issue one alleges that Santa Rosa Academy was "violating FAPE/IDEA as it applies to my son [Student] and how I as the parent teacher must legally assist and provide assistance and constant communication for him." The issue also states that the charter school, the school board president, two members of the school board, the school director, and the charter school's legal counsel "have violated FAPE/IDEA for My son [Student], a Kindergartener." Student states that the named individuals did not provide answers to specific questions via email or timely respond to public records requests. Student also states that these individuals "fabricated an entire story involving my needs as they directly pertain to my son's IEP." Issue one alleges that Santa Rosa Academy violated the Americans with Disabilities Act, referred to as the ADA, the Health Insurance Portability and Accountability Act, referred to as HIPPA, and the Brown Act, and that school representatives committed libel and defamed Parent in retaliation for speaking about alleged Brown Act violations at school board meetings.

Issue one does not include information about any specific IEPs at issue, services provided or denied, or the time period of any dispute. Although Student raised a general allegation of a denial of FAPE, the complaint does not include sufficient facts about any proposed change regarding the Student's identification, evaluation, or educational placement. Student's complaint is impermissibly vague as to the allegation of the denial of FAPE, and confusing in that it appears to primarily allege violations for claims under the ADA, HIPPA, the Brown Act, the California Public Records Act, and tort law, which are not under the jurisdiction of OAH.

Issue two alleges that Santa Rosa Academy retaliated against Parent under the ADA: "regarding the implementation and daily assistance for [Student's] current 504"

and former litigation between the parties. Issue two also alleges that a specific individual engaged in undefined illegal behavior.

With respect to issue two, the complaint is vague as to whether Student is raising an issue under the IDEA, the ADA, or Section 504 of the Rehabilitation Act of 1973. Issue two is also ambiguous as to whether Student is eligible for special education and related services under the IDEA and therefore entitled to its procedural safeguards. As such, issue two is insufficiently pled.

Issue three alleges that Santa Rosa Academy retaliated against Parent for filing a petition to recall three school board members. Issue three states that these school board members violated the Brown Act when "they choose to silence parents over their illegal acts/actions during public school board meetings as it relates to the needs of maintaining and preserving the charter school which provides specific and necessary special education services to my son [Student] through myself the parent."

Issue three is insufficiently pled in that it fails to include facts relating to the provision of a FAPE to Student. Parent's primary complaint appears to center on the administration of the school, and the behavior of school board members at public meetings. The issue fails to connect how any alleged mismanagement of the school or improper actions by school board members directly ties to the special education services and supports provided to Student under any specific IEP for any specific period of time.

For all issues, the complaint fails to provide Santa Rosa Academy with the required problem description and the facts relating to the problem.

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.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 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.

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Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings