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

NOVEMBER 18, 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. On October 7, 2020, Santa Rosa Academy filed a notice of insufficiency as to the complaint. On October 9, 2020, OAH found Student's complaint to be insufficient and gave Student 14 days to file a legally sufficient amended complaint.

On October 15, 2020, Student filed an amended complaint. On October 21, 2020, Santa Rosa filed a timely notice of insufficiency as to the amended complaint. On

October 23, 2020, OAH found Student's amended complaint to be insufficient and gave Student 14 days to file a legally sufficient second amended complaint.

On November 9, 2020, Student filed a second amended complaint. On November 16, 2020, Santa Rosa filed a timely notice of insufficiency as to the second amended 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 second amended complaint is substantially similar to Student's original and amended complaints, which OAH previously found insufficient. To create the second amended complaint, Parent filed the amended complaint with the addition of several handwritten notes with arrows to denote the additions in the second amended complaint. All additional comments in the second amended complaint refer to a 504 plan, but do not refer to any Individual Education Programs, referred to as IEPs. Student is strongly encouraged to contact OAH to request the assistance of a mediator in the event Student chooses to file a third amended complaint.

Student's second amended complaint alleges three insufficiently pled claims. Issue One is identical to that filed on October 15, 2020 and was previously determined to be insufficient, except for one added handwritten note: "Per 504, I am unable to provide any accommodations because of trespass notice." Second amended Issue One does not state sufficient facts about a problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement or providing the Student with a free appropriate education under the IDEA. As a result, Issue One is insufficiently pled.

Issue Two is the same issue that was filed in the amended complaint and previously determined to be insufficient, with the exception of one added handwritten note: "Per 504, I am unable to provide any accommodations/modifications per 'trespass notice' dated 9/30/20." The information in second amended Issue Two does not remedy the ambiguity that existed previously. Second amended Issue Two is insufficiently pled because there are insufficient facts to determine whether Student is eligible for special education and related services under the IDEA and therefore entitled to its procedural safeguards.

Lastly, Issue Three in the second amended complaint is identical to the allegation in the amended complaint and determined to be insufficiently pled, with the exception of a handwritten note: "Per 504, I am unable to have any contact based on falsified 'trespass notice' dated 9/30/20." The second amended Issue Three does not state facts relating to a provision of FAPE under the IDEA and does not describe any issues related to special education services and supports provided to Student. Amended Issue Three is insufficiently pled.

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 second amended complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file a third amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).

3. The third 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. In the event Parent files a third amended complaint after the 14-day deadline in this Order, Santa Rosa may move to dismiss Student's case in its entirety.
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