BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA VIRTUAL ACADEMY AT SONOMA.

OAH CASE NUMBER 2024060371

ORDER DENYING REQUEST TO FILE THIRD AMENDED COMPLAINT WITHOUT PREJUDICE; AND FINDING SECOND AMENDED COMPLAINT INSUFFICIENT

JULY 11, 2024

On June 10, 2024, Parents, on behalf of Student filed a Due Process Hearing Request, also called a complaint, with the Office of Administrative Hearings, called OAH, naming California Virtual Academies Sonoma as respondent. For record clarity, it is noted that the charter school's accurate name is California Virtual Academy at Sonoma, and it will be referred to as such, or as CAVA Sonoma, going forward.

CAVA Sonoma filed a Notice of Insufficiency as to the complaint on July 24, 2024, however, before it could be ruled on, Student filed an amended complaint. OAH found the original complaint insufficient, providing a detailed analysis of why the complaint

did not meet the filing requirements. OAH deemed Student's amended complaint a request to amend Student's compliant, which was granted, restarting the timelines in the case. OAH's order informed self-represented Parents of the availability of an OAH mediator to assist with identifying issues in an amended complaint.

On July 10, 2024, CAVA Sonoma filed a Notice of Insufficiency as to Student's first amended complaint. On July 11, 2024, Student filed another amended complaint prior to OAH's ruling on CAVA Sonoma's Notice of Insufficiency.

DENIAL OF REQUEST TO AMEND COMPLAINT

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Administrative Law Judges retain discretion to grant permission to amend a complaint. Student's second amended complaint, filed July 11, 2024, is being treated as a request to amend Student's complaint. In this instance, self-represented parents are not filing complaints that meet the requirements of the Individuals with Disabilities Education Act, or IDEA; or the California special education laws. This is true despite the June 25, 2024 order detailing the deficiencies of the complaint. Student's third amended complaint was not modified to meet the statutory requirements, and does not reflect an effort to comply with the prior order determining the initial complaint insufficient. As a result, it continues to include several deficiencies described in OAHs June 25, 2024 order. Repeatedly ignoring the statutory requirements to include

necessary information in Student's complaint results in more notices of insufficiency and ultimately delays resolution of disputes regarding Student's educational program. Student's request to file a third amended complaint is denied. However, Student will be allowed to file an amended complaint that complies with the statute as explained later in this order.

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, 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, or 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.] 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 46541, 46699.)

Each complaint filed with OAH must be a complete document. An amended complaint may not rely on statements form a prior version of the complaint to be included as part of the following amended complaint.

The IDEA specifies the information required in a complaint for due process hearing. The complaint must include:

1. The name of the child;
2. The residence address of the child;
3. The name of the school the child is attending;
4. A description of the nature of the special education problem relating to the proposed, or refused, initiation or change in the child's special education eligibility, individual educational program or related services; and
5. A proposed resolution to each problem identified.

(20 U.S.C. § 1415(7)(a)(ii); 34 C.F.R. § 300.508(b).))

A party may not have a due process hearing until the party or the attorney representing the party, files a notice that meets these requirements. ((20 U.S.C. § 1415(7)(B); 34 C.F.R. § 300.508(c).)

Student's first amended complaint fails to meet the statutory requirements. It is a four-page, single spaced, narrative that fails to provide the basic contact details for Student or his parents, fails to identify whether Student is currently eligible for special education and under what category. Most importantly, the complaint fails to state whether Parents contest a failure to make Student eligible; whether they are complaining about currently offered IEP services, that were inadequate or ultimately not implemented; or whether they are complaining about services they believe should be offered but were not. The complaint fails to state any proposed resolutions to the problems. As a result, the reader is left to guess what part of the information in the complaint is intended to be the statement of a problem for which Student seeks relief. Neither the parties nor the Administrative Law Judge is required to hunt through pages of narrative trying to find Student's problem allegations or proposed resolutions. (*E.M. v. Pajaro Valley Unified School District,* (9th Cir. 2011) 652 F. 3d. 999, 1010-1011, [dis.opn. of Bea.) citing *Greenwood v. FAA*, (9th Cir. 1994) 28 F. 3d 971, 977.) .]

Student appears to be using the complaint amendment process to negotiate a settlement with CAVA Sonoma. That is not a proper use of the process. The complaint is insufficient.

ORDER

1. Student's request to file the July 11, 2024, second amended complaint is Denied.
2. Student's first amended complaint, deemed filed on June 25, 2024, is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
3. Student 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 Student fails to file an amended complaint by the deadline, the complaint will be dismissed.
6. All dates previously set in this matter are vacated.

MEDIATOR ASSISTANCE TO STATE COMPLAINTS AVAILABLE TO SELF REPRESENTED PARENTS

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.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings