

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010040386

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT AND
DENIAL OF DISTRICT'S MOTION TO
DISMISS

On April 7, 2010, Student filed a due process hearing request (complaint) naming the District as a respondent. Student alleged two issues: 1) that Student was denied a FAPE because he should have been found eligible for special education and provided an appropriate placement and services from May of 2008 through the time of filing; and 2) that Student was denied a FAPE in the 2009-2010 school year because he should have been assessed and found eligible for special education. As to both issues, Student proposed a resolution of a finding of eligibility, four hours per week of 1:1 educational therapy during summer, and 1:1 RSP services during school for five hours per week. Although Student references the fact that he is on a section 504 plan and that pursuant to that plan, he should have been assessed, the due process hearing request is unambiguously seeking relief under the IDEA only.

On April 19, 2010, District timely filed a Notice of Insufficiency (NOI) and Motion to Dismiss Issue Two on the ground that it sought section 504 relief that was outside OAH jurisdiction. As discussed below, the complaint is sufficient and Issue Two is not subject to dismissal.

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A). A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.² These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient

¹ 20 U.S.C. § 1415(b) & (c).

² 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.³

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ 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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.⁶

Here, the complaint is sufficient because it clearly alleges that Student should have been eligible for special education as a child with a specific learning disability during the relevant time period. From the face of the complaint, it is clear that Student is not seeking to bring a claim under section 504 of the Rehabilitation Act. Instead, the factual allegations about section 504 are merely alleged because they explain what Student’s education has been during the time he alleges he should have been eligible under the IDEA. Further, the proposed resolutions are clear and unambiguous, i.e., Student contends that he needs RSP services if found eligible and some compensatory education. The complaint is sufficient.

As to the District’s Motion to Dismiss Issue Two, District is correct that claims under section 504 are outside of OAH jurisdiction. However, as discussed above, it does not appear that Student is making a claim under section 504. Instead, Student merely references the alleged lack of a section 504 assessment and services to attempt to show that his needs were not addressed at all. Obviously, as a matter of law, the alleged failure to follow the section 504 plan is not the equivalent of a denial of a FAPE. In sum, the mere mention of section 504, and the District’s alleged failure to follow a 504 plan, does not put Student’s Issue Two FAPE claim outside OAH jurisdiction.

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [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 Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁶ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

ORDER

1. The complaint is deemed sufficient under section 1415(b)(7)(A)(ii).
2. The District's Motion to Dismiss Issue Two is denied.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: April 21, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings