

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VACAVILLE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011061218

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND MOTION TO
DISMISS

On June 27, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming District as the respondent.

On July 11, 2011, District filed a Notice of Insufficiency (NOI) as to Student's complaint. The NOI also contains a motion to dismiss certain issues as outside of OAH jurisdiction.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² 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 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 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.³ 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.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ 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.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

² 20 U.S.C. § 1415(b) & (c).

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

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *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.].

⁷ 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).

DISCUSSION

Student's complaint alleges six problems resulting in a denial of a FAPE. As discussed below, Problem number 5 is insufficiently pled. Problems number 1 through 4 and Problem number 6 are generally sufficient, although as discussed below certain allegations therein are outside OAH jurisdiction and are therefore dismissed.

Student alleges in Problem number 1 that Student was not provided necessary accommodations including reducing/shortening assignments, using a calculator for math, preferential/assigned seating, presentation with tasks or directions one at a time, or given extended time to complete assignments. Problem number 2 alleges that Student was suspended due to behaviors, but that an individualized educational program (IEP) team meeting should have been set to address the behaviors and develop appropriate behavioral interventions. Problem number 3 contains the following factual allegations, which allegedly resulted in a classroom assault and inappropriate two-day suspension: District failed to implement the accommodations stated in Student's 2010 IEP or his March 24, 2011, IEP; District failed to monitor Student's progress toward his annual goals and objectives; District failed to call an IEP team meeting when circumstances warranted; and District failed to appropriately address Student's behavioral needs. Problem number 3 also contains alleged procedural violations: that District failed to provide parent with Student's records, and failed to schedule an IEP team meeting appropriately. Problem number 4 contains further allegations regarding Student's needs for counseling that District allegedly failed to appropriately address, which Student alleges resulted in a denial of a FAPE. Problem number 6 adequately alleges that Student was denied a FAPE during his two-day suspension.

Student's statement of these claims is sufficient. The facts alleged are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problems to permit District to respond to the complaint and participate in a resolution session and mediation.

Problem number 5, however, is insufficiently pled. It apparently relates to statements made by a program specialist at an IEP team meeting, but it does not adequately allege how her participation was improper, nor how it resulted in a denial of FAPE.

Problems number 1 and 2, while generally sufficient as discussed above, contain allegations that Student was assigned a failing grade, and that Education Code, section 49067, requires that an IEP team meeting must be held before a failing grade is assigned. Student misreads Education Code, section 49067, which is located within Title 2 ("Elementary and Secondary Education"), Division 4 ("Instruction and Services"), Part 27 ("Pupils"), Chapter 6.5 ("Pupil Records") of the Education Code. Special Education regulations are contained in a different Chapter, Chapter 30 of the same Title, Division and Part of the Code. Thus, section 49067 does not reference an IEP team meeting, does not specifically refer to special education students under IDEA, and is not within OAH jurisdiction. These allegations are therefore dismissed as issues for hearing from Problems number 1 and 2 of Student's complaint.

Problem number 3, while generally sufficient as discussed above, contains allegations of discrimination and violation of Student's constitutional rights, and allegations that District divulged confidential personal and medical information. These allegations are outside OAH jurisdiction and are therefore dismissed.

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint⁸ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request as to Problem number 5.

ORDER

1. The allegations contained in Issues 1 and 2 pertaining to Student's failing grade, and in Issue 3 pertaining to discrimination, violation of constitutional rights, and divulging confidential information, are dismissed as issues for hearing.

2. In all other respects, Issues 1 through 4 and Issue 6, are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

3. Issue 5 is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).

4. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁹

5. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

⁸ Ed. Code, § 56505.

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1 through 4 and Issue 6, as alleged.

Dated: July 20, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings