

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

REACH CHARTER SCHOOL AND
SEBASTOPOL UNION SCHOOL
DISTRICT.

OAH CASE NO. 2011090703

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 26, 2011, Maureen R. Graves, Attorney for Student filed a First Amended Due Process Hearing Request¹ (amended complaint) naming Reach Charter School (Charter) and the Sebastopol Union School District (District). The Office of Administrative Hearings considered this as a motion to amend Student's original complaint, and on October 3, 2011, granted the motion, deeming Student's amended complaint filed on that date.

On September 27, 2011, Carl D. Corbin, Attorney for District, filed a Notice of Insufficiency (NOI) as to Student's amended complaint.

On September 28, 2011, Student filed a reply to District's NOI.

APPLICABLE LAW

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,

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).

² 20 U.S.C. § 1415(b) & (c).

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.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 Individuals with Disabilities Education Act (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

DISCUSSION

The amended complaint presents eight issues all of which allegedly occurred during the 2010-2011 and the 2011-2012 school years and all of which are sufficient. The facts alleged in Student’s amended complaint are sufficient to put Charter and District on notice of the issues forming the basis of the complaint. Student’s amended complaint identifies the issues and adequate related facts about the problem to permit Charter and District to respond to the complaint and participate in a resolution session and mediation. The issues are discussed individually as follows:

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).

Issue No. 1: REACH School has replaced its ostensible philosophical commitments as well as IDEA's guarantees of parental participation in decisionmaking (sic) with administrative fiat and stonewalling culminating in "get lost"

Although not succinctly pled, this issue presents an alleged procedural violation of the IDEA related to parental participation in the IEP process and is sufficiently pled to permit Charter and District to respond to the amended complaint and participate in a resolution session and mediation.

Issue No. 2: Despite its obligation to comply with special education procedures and to provide appropriate special education services to IDEA-eligible students at REACH School, the Sebastopol Union School District has violated IDEA's procedures by purporting to wash its hands of any responsibility for [Student's] education when a dispute arose between the family and REACH's new administrator.

This issue presents both alleged procedural and alleged substantive claims and is sufficiently pled to permit Charter and District to respond to the amended complaint and participate in a resolution session and mediation.

Issue No. 3: The Sebastopol Union School District failed during the 2010-11 school year to provide needed aide support, reducing [Student's] access to instruction, placing improper burdens on his parents to do work that should have been done by special education staff, and apparently making [Student's] presence at REACH sufficiently burdensome for staff there that its new director decided to fix that problem by excluding [Student].

This issue relates to alleged lack of aide support of Student and is sufficiently pled to permit Charter and District to respond to the amended complaint and participate in a resolution session and mediation.

Issue No. 4: The Sebastopol Union School District failed during the 2010-11 school year to provide adequate special education services in the area of math.

This issue relates to an alleged substantive violation of the IDEA related to Student's academic needs and is sufficient to permit Charter and District to respond to the amended complaint and participate in a resolution session and mediation.

Issue No. 5: REACH has proposed, and SUSD has acquiesced in, a substantively inappropriate leap from sixth to eighth grade for a student who required substantial accommodations and work modifications even for sixth grade material.

This issue relates to Student's program and is sufficiently to permit Charter and District to respond to the amended complaint and participate in a resolution session and mediation.

Issue No. 6: REACH and SUSD have attempted to fundamentally change [Student's] program without sufficient prior written notice.

This issue relates to an alleged procedural violation of the IDEA and is sufficient to permit Charter and District to respond to the amended complaint and participate in a resolution session and mediation.

Issue No. 7 REACH School has violated Section 504 of the Rehabilitation Act of 1973 by discriminating based on disability and by retaliating against [Student] and his parents based on the parents' advocacy on his behalf.

This issue relates to an alleged violation of Section 504 of the Rehabilitation Act of 1973 and is sufficiently pled to permit Charter and District to respond to the amended complaint and participate in a resolution session and mediation. An NOI addresses only whether the amended complaint is sufficiently pleaded to give Charter and District adequate notice of Student's claims, which it does here. Charter and District may challenge the merits of this issue in a motion to dismiss or as an affirmative defense.

Issue No. 8: The Sebastopol Union School District has violated Section 504 of the Rehabilitation Act of 1973 by mishandling cyberbullying by students during the 2010-11 school year and by cooperating in and enabling REACH School's discrimination against [Student] based on disability and its retaliation against [Student] and his parents based on his parent's advocacy on his behalf.

This issue relates to an alleged violation of Section 504 of the Rehabilitation Act of 1973 and is sufficiently pled to permit Charter and District to respond to the amended complaint and participate in a resolution session and mediation. An NOI addresses only whether the amended complaint is sufficiently pleaded to give Charter and District adequate notice of Student's claims, which it does here. Charter and District may challenge the merits of this issue in a motion to dismiss or as an affirmative defense.

Therefore, Student's statement of the claims in issues 1 through 8 is legally sufficient.

Student's proposed resolutions requests that Student be allowed to attend REACH in the 2011-12 school year; have District conform the grade designation of Student; have the IEP team make determinations regarding Student's placement and services; reimburse Student's Parents for services provided in lieu of services he should have received from Charter and District; compensatory education for time missed and 200 hours of compensatory education in math. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. The amended complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: October 3, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings