

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012030702

ORDER OF DETERMINATION OF
SUFFICIENCY OF FIRST AMENDED
DUE PROCESS COMPLAINT

On March 15, 2012, Student filed a Request for Due Process and Mediation¹ (complaint) naming District. On March 26, 2012, OAH issued an order granting District's notice of insufficiency (NOI) and granting Student leave to amend. Student timely filed an amended complaint on April 5, 2012. On April 12, 2012, District filed a NOI as to Student's amended complaint and a motion to dismiss as to Issue Four in the complaint. This Order addresses both the NOI and the motion to dismiss. As discussed below, the NOI is denied and the motion to dismiss is granted.

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, 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

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).

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

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

A procedural violation constitutes a denial of FAPE if it impeded the child’s right to a FAPE, significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.)

DISCUSSION

Student’s amended complaint alleges three claims, which are identical to the claims raised in the original complaint. As an introductory statement to the issues, Student has added the following: “Each and every issue alleged herein is alleged as a denial of FAPE for the sole purpose for the filing of a due process complaint pursuant to C.E.C. § 56500 et. seq.” This statement by itself is not sufficient to provide District with the required notice of a description of the problem and the facts relating to the problem. However, as discussed

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).

below, the stated claims are each sufficiently pleaded when the allegations of fact are read in conjunction with this statement.

Student alleges in issue one that District failed to provide educational records to Parent. Although Student fails to state facts that identify whether this procedural violation impeded the child's right to a FAPE, impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, and/or caused a deprivation of educational benefits, when read in conjunction with the introductory statement alleging a denial of FAPE and general allegations of fact, it is sufficient. Issue one provides District with sufficient information to participate in resolution sessions and mediation and prepare for hearing.

With respect to issue two, Student alleges that District over the past two years has failed to fully and appropriately assess Student in all areas of suspected disability. The complaint states extensive factual history dating back to 2001. Within the statute of limitations, it mentions assessments of Student's cognition and academics, and a speech and language assessment District conducted in 2012. Student's claims in issue two are therefore limited to the issue of whether District failed to appropriately assess Student's unique educational needs in the areas of cognition, academics and speech and language. As limited, the claim is sufficiently pleaded to provide District with enough information to participate in a resolution session, mediation and to prepare for hearing. If Student intended to include other areas of need in issue two, Student may file a motion to amend the complaint.

With respect to issue three, Student generally alleges that District over the past two years has failed to provide Student with a FAPE. Student further alleges that District failed to "fully assess and identify Student's unique educational needs," that he remains far behind his peers, and lacks "skills, including social skills" to allow him to function at or near grade level. The complaint mentions a recent assessment recommending a structured learning environment addressing needs in the areas of pragmatics and social skills. Issue three is therefore limited to the claim that District denied Student a FAPE by failing to assess and identify Student's unique educational needs in the area of pragmatics and social skills. As limited, the claim is sufficiently pleaded to provide District with enough information to participate in a resolution session, mediation and to prepare for hearing. If Student intended to include other areas of need in issue three, Student may file a motion to amend the complaint.

Motion to Dismiss

APPLICABLE LAW AND DISCUSSION

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.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code. Issue Four in Student’s complaint alleges that District denied Student and parent their rights under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and state civil rights laws. Therefore Student’s Issue Four is dismissed.

ORDER

1. On the NOI: Student’s complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii). District’s NOI is denied.
2. On the Motion to Dismiss: District’s motion to dismiss Issue Four from the amended complaint is granted.
3. All dates shall remain as calendared unless otherwise ordered.

Dated: April 13, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings