

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT(S) ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012050901

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT; ORDER DENYING  
DISTRICT'S MOTION TO DISMISS

On May 22, 2012, Student filed a Request for Due Process Hearing (complaint) naming San Francisco Unified School District as respondent.

On June 5, 2012, District filed a Notice of Insufficiency (NOI) and a Motion to Dismiss. District's timely NOI argues that Problems 2 through 5 in Student's complaint do not provide sufficient details regarding the nature of the problems alleged. District contends that the entire complaint should be dismissed because Student has informed District that Student will drop her request for due process.

OAH received no response to the Motion to Dismiss from Student.

*NOI as to Issues 2 through 5*

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>1</sup> 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.<sup>2</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

---

<sup>1</sup> 20 U.S.C. § 1415(b) & (c).

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

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>3</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>4</sup> 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.<sup>5</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>6</sup>

Here, the complaint is sufficient. The complaint lists five problems. Problems 1, 2 and 3 arise out of an IEP team meeting in October 2011. Problem 1 alleges all required members of the IEP team were not present at the meeting. Student’s proposed resolution is District must hold an IEP meeting with all required members present. District does not contend Problem 1 is insufficient. Problem 2 further alleges, at the improperly convened October 2011 meeting, the resource specialist teacher said the assistant superintendent told him Student should be exited from special education. Student’s proposed resolution for Problem 2 is, again, District must hold an IEP meeting in which all required members are present, and include a discussion about exiting. Problem 3 alleges that, after the October 2011 IEP team meeting, District no longer provided services to Student. Student seeks compensatory education for lost services.

In Problem 4, Student alleges Parents made a written request for assessment of “emotional issues” on February 29, 2012 and District failed to provide an assessment plan or conduct an assessment. The proposed resolution is to require District provide an assessment plan and conduct an assessment.

In Problem 5, Student alleges that in March 2012, Student and District agreed upon a behavior/graduation plan that would consist of accommodations and modifications, including

---

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

<sup>4</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>5</sup> *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.].

<sup>6</sup> 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).

alternative requirements and completion of “make-up” work, such that Student would be eligible to graduate. Student contends the school principal refused to follow the plan. Student seeks compensatory education for lost opportunity.

The facts alleged in Student’s complaint 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 problem to permit District to respond to the complaint and participate in a resolution session and mediation. The IDEA requires only a “description of the nature of the problem,” facts related to the problem and proposed resolutions to the extent know and available at the time (20 U.S.C. (b)(7)(A)(ii)), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings. Therefore, Student’s complaint is sufficient.

### *Motion to Dismiss*

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9<sup>th</sup> Cir. 2000) 223 F.3d 1026, 1028-1029.) Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc...., OAH will not dismiss claims that have otherwise been properly pleaded. The District fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings or motion for summary adjudication prior to giving a petitioner the opportunity to develop a factual record at hearing. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

As set forth above, Student’s complaint meets the liberal notice requirements applicable to due process complaints. District’s motion to dismiss is, essentially, a motion for summary adjudication. District offers evidence in support of the motion including photocopies of emails and a letter, and a declaration from counsel.<sup>7</sup> District contends the evidence submitted demonstrates Student’s intention to withdraw Student’s complaint. This

---

<sup>7</sup> The District submitted a “Declaration of Damora Moore in Support of San Francisco Unified School District’s Motion to Dismiss Complaint for Failure to Participate in a Resolution Session.” The declaration contains no statements, and the motion makes no argument concerning participation in a resolution session, as would be required if this motion was based upon Education Code section 56501.5, subdivision (e)(1).

is a factual issue, and more importantly, only Student can withdraw the complaint. OAH does not summarily resolve factual issues of this nature.

ORDER

1. The 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.
3. The motion to dismiss is denied.

Dated: June 13, 2012

/s/

---

MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings