

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT, ADVANCE KIDS, INC. &
ALTA CALIFORNIA REGIONAL
CENTER.

OAH CASE NO. 2012060812

ORDER OF DETERMINATION OF
INSUFFICIENCY AND ORDER ON
DISTRICT'S MOTION TO DISMISS

On June 19, 2012, Student filed a Request for Due Process Hearing (complaint), against Sacramento City Unified School District (District); Advance Kids, Inc.; and Alta California Regional Center (Alta). The tenor of Student's complaint is that District denied Student a free and appropriate public education (FAPE) by failing to fund and implement assistive technology and toilet training goals and services allegedly contained in Student's May 23, 2012, individual education program (IEP), and by violating Student's and Parent's procedural rights under the Individuals with Disabilities Education Act (IDEA) through untimely and improper communications among the parties. Student also appears to seek enforcement of a settlement agreement reached during the resolution session in this matter.

On June 27, 2012, District timely filed a Notice of Insufficiency (NOI), alleging that Issues 2, 3, and 6 in the complaint did not give it sufficient notice of the nature of these claims against District. District also filed a Motion to Dismiss, alleging that the Office of Administrative Hearings (OAH) lacks jurisdiction over the equal protection and discrimination violations Student alleges in Issue 2. District further alleges Issues 3 and 6 do not seem to relate to problems that fall within OAH's jurisdiction. In addition, District moved to dismiss Student's various requests for general, special, and punitive damages from the complaint on the grounds that monetary damages are unavailable under the IDEA.

OAH received no response to District's Notice of Insufficiency or Motion to Dismiss from Student.

As discussed below, Issues 2, 3, and 6 in the complaint are insufficiently pled, but Student will be given an opportunity to amend. As a result, District's motion to dismiss is moot at this time.

APPLICABLE LAW

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 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.² 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.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 Administrative Law Judge.⁶

The purpose of the 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

¹ 20 U.S.C. § 1415(b) & (c).

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

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).

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 will generally grant 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.

DISCUSSION

Notice of Insufficiency

Student’s complaint contains six issues for determination. Issues 1 and 5 identify specific problems and provide adequate related facts about the problems to permit District to respond to the complaint and participate in a resolution session and mediation. Issue 1 specifies that District has failed to provide Student with an assistive technology, an iPad, which was agreed upon in the May 23, 2012 IEP. Issue 5 specifies that District has failed to implement Student’s toilet training program, which was also agreed to by the parties.⁷ The issues are supported with sufficient related facts. Accordingly, Student’s Issues 1 and 5 are legally sufficient.

However, Issues 2, 3, 4 and 6 are legally insufficient. Here, it cannot be determined what the “nature of the problem” is based on the allegations of the complaint. Issue 2 alleges that an unidentified “device” would not be “implemented” unless or until Student’s parents (Parents) signed a release of liability, which allegedly violates Student’s equal protection and discrimination laws. While equal protection and discrimination claims are outside OAH’s jurisdiction, a denial of FAPE through a district’s failure to implement a pupil’s IEP goals and services falls squarely within OAH’s jurisdiction. However, the complaint fails to identify the device at issue, explain its relationship to Student’s May 23, 2012 IEP, and whether District’s failure to “implement” a goal or service related to this “device” denied Student FAPE.

⁷ Issue 5 alleges that Advance Kids, Inc. has failed to implement the toilet training program. Student has named Advance Kids, Inc. as a party to this action. On July 2, 2012, OAH issued an order to show cause requiring Student to provide legal authority supporting OAH’s jurisdiction over a private third-party agency such as Advance Kids, Inc. Regardless of whether Advance Kids, Inc. remains a party to this action, the issue is read as alleged against District.

Issue 3 similarly raises jurisdictional problems that may be capable of amendment, but is also too vague to allow District understand the nature of the claim alleged against it. The claim appears to allege District and Advance Kids, Inc., violated an agreement reached during the resolution session regarding an unidentified matter, and seeks enforcement of this unspecified term of the settlement agreement. While a “a mere breach” of a settlement agreement should be addressed by the California Department of Education’s compliance complaint procedure, OAH may adjudicate claims alleging a denial of a FAPE as a result of a violation of a settlement agreement. (*Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541.) However, the complaint fails to identify the date the parties entered into the settlement agreement, specify the term that was breached, and explain how District’s breach resulted in a denial of FAPE to Student.

Issue 4 alleges that Alta was required to advocate on behalf of Student and failed to provide assistance to Student and Parents. It is assumed that Student is referring to a request for assistance from Alta in Student’s dispute with District. Issue 4 fails to identify any matter relating to the identification, evaluation, or educational placement of Student, or the provision of a FAPE, with respect to Alta. In other words, Student fails to identify what obligation Alta had to Student with respect to special education under the IDEA and how Alta’s action or lack of action has denied Student a FAPE. Issue 4 does not identify a problem or provide related facts sufficient to put District on notice such that it can prepare for hearing or participate in a resolution session or mediation. Accordingly, Issue 4 is insufficiently pled.⁸

Issue 6 complains of untimely and improper communications among the parties. The IDEA’s procedural safeguards impose strict requirements on the method and timeliness of communications among the parties. An IEP team may also impose requirements on the means and frequency of communication among parties consistent with IDEA’s procedural safeguards. The only specific communication referenced in Issue 6, however, is an “unacceptable” email notice that Student was sick. Yet, the complaint still fails to allege the date, sender, and recipient of this email, what IDEA or IEP provision the email violated, and how that violation resulted in a denial of FAPE to Student.

Thus, as alleged, Issues 2, 3, 4 and 6 in the complaint are insufficiently pled to put the District on notice of the issues for purposes of preparing for resolution session, mediation, or hearing. Because these claims within the complaint are insufficient, they will be dismissed; however, Student will have a chance to amend. The failures of the complaint set forth in this order are an example and may not be an exhaustive list of items Student should address if he chooses to amend Issues 2, 3, 4 and 6 in his complaint.

⁸ On July 2, 2012, OAH issued an order to show cause requiring Student to provide legal authority supporting OAH’s jurisdiction over Alta, in a matter brought under the IDEA. Regardless of whether Student is able to provide such legal authority, Issue 4 is insufficiently pled.

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. Whether Student is barred from pursuing certain remedies under the IDEA is a matter that can be more fully discussed at the prehearing conference.

Parents who are not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁹ Parents are encouraged to contact OAH for assistance if they intend to amend these claims in their due process hearing request.

Motion to Dismiss

District is correct that equal protection and discrimination claims, are outside OAH's jurisdiction. District also properly objects to Student's request for monetary damages, such as general, special, and punitive damages, which are unavailable under the IDEA. (*C.O. v. Portland Public Schools* (9th Cir. 2012) 679 F.3d 1162, 1166.) However, because Issue 2, 3, 4 and 6 alleged in the complaint are insufficient, and subject to dismissal unless amended, District's Motion to Dismiss need not be ruled on at this time. Accordingly, District's Motion to Dismiss is denied as moot.

ORDER

1. Student's Issues 1 and 5 in his complaint are sufficient pled under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Student's Issues 2, 3, 4 and 6 in his complaint are insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰
4. 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.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only as to Issues 1 and 5 of Student's complaint.

⁹ Ed. Code, § 56505.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

6. District's Motion to Dismiss is denied as moot in light of the above.

IT IS SO ORDERED.

Dated: July 9, 2012

/s/

JOAN HERRINGTON
Administrative Law Judge
Office of Administrative Hearings