

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CLAREMONT UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090804

ORDER PARTIALLY GRANTING NOI
AND DISMISSING PROBLEMS TWO
AND THREE

On September 24, 2012 Parent on behalf of Student filed a Due Process Hearing Request¹ (complaint) naming Claremont Unified School District (District). On September 27, 2012, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, the NOI is partially granted.

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 requirements prevent vague and confusing complaints, and promote fairness by providing the

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).

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

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.

DISCUSSION

As discussed below, Student’s complaint alleges two issues. Student’s Problems 1 and 4 can be read together to state a single issue: Did District deny Student a free appropriate public education (FAPE) during the statutory period by failing to find her eligible for special education? The factual allegations show Student is in the 10th grade at Claremont High School. She alleges that she was diagnosed in the eighth grade as having a “low IQ and low academic performance.” She alleges she has struggled academically and has difficulty with acquisition and retention of materials. She alleges that she needs more academic support, and that Parents have asked District from the time she was in eighth grade to provide her with an individualized education plan (IEP). She also alleges that District’s school psychologist informed Parent that District refuses to provide academic support to Student, and that Student will always struggle and have difficulty in school. Student’s proposed resolution for Problems 1 and 4 is for District to find Student eligible for special

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).

education and to provide an individualized education program (IEP) with appropriate and necessary academic support. The above demonstrates that Problems 1 and 4 state sufficient facts to form the basis for the issue, and for District to respond to the complaint and participate in a resolution session, mediation and due process hearing.

Problem 5 states the following issue: Did District deny Student a FAPE by failing to assess Student in all areas of suspected need, thereby failing to find her eligible for special education? Student alleges that District based its decision to not provide Student with academic supports and services on outdated and inaccurate test results. Student's proposed resolution seeks an IEP for Student with appropriate and necessary academic support. When read in conjunction with facts alleged in Problems 1 and 4, Problem 5 states sufficient facts to form the basis for the issue, and for District to respond to the complaint and participate in a resolution session, mediation, and due process hearing.

Problems 2 and 3 allege that District has failed to monitor and implement Student's Section 504 plan, as promised in a spring 2012 meeting, and that Student's 504 plan does not provide Student with sufficient academic support. Student's proposed resolution for both problems is to find Student eligible for special education. District contends that Problems 2 and 3 are insufficient because they do not allege a claim for relief under the IDEA. District generally requests that the entire complaint be dismissed, but its request can be inferred to include dismissal of Problems 2 and 3, to the extent they are facially outside of OAH jurisdiction. Here, although sufficiently pleaded to give District notice of the claims, Student's claims of violations of Section 504 of the American with Disabilities Act violations are not within the jurisdiction of due process hearings under the IDEA, and are dismissed.

ORDER

1. Problems 1, 4 and 5 of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Problems 2 and 3 of Student's complaint are dismissed on the ground that they are facially outside of OAH jurisdiction.
3. The hearing shall proceed only on Problems 1, 4 and 5. All previously scheduled dates are confirmed.

Dated: September 27, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings