

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ACALANES UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2012120740

ORDER (1) DETERMINING ISSUES SIX, SEVEN AND EIGHT TO BE SUFFICIENTLY PLEADED, AND (2) GRANTING DISTRICT'S MOTION TO DISMISS ISSUES ONE, TWO, FOUR AND FIVE

On December 19, 2012, Student filed a due process hearing request¹ (complaint) naming the Acalanes Union High School District (District).

On January 4, 2012, District timely filed a notice of insufficiency (NOI) as to issues one, two, four, five, six, seven and eight of Student's complaint.^{2, 3} Contained within that NOI is a motion to dismiss these same claims as brought under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)) and outside the jurisdiction of the Office of Administrative Hearings (OAH).

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 District filed its NOI with OAH after 5:00 p.m. on Friday, January 4, 2013, and so is deemed filed on Monday, January 7, 2013 for purposes of issuing a sufficiency determination. However, the NOI is considered timely filed for purposes of challenging Student's complaint, as January 4, 2013 is 15 days after the complaint was received on December 20, 2012. Student argues in her opposition that the complaint was received by District on December 19, 2012, but no evidence of a successful fax transmission or personal delivery on that day was submitted in support of her argument.

³ District's NOI sometimes requests that OAH "strike" the claims as insufficiently pleaded; however, this order is limited to a determination of the sufficiency of those claims. (20 U.S.C., § 1415(b)(7)(A).)

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.⁴ 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.⁵

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.⁶ 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.⁷

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁸ 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.⁹

⁴ 20 U.S.C. § 1415(b) & (c).

⁵ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

⁷ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁸ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁹ *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.].

Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.¹⁰

DISCUSSION

Notice of Insufficiency

The facts alleged in Student's complaint, as to those issues not subject to dismissal as discussed below, 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 complaint chronicles attempts by Student, who is now an adult in twelfth grade, to obtain accommodations under Section 504 (a 504 plan) from District after she began suffering debilitating headaches due to depression and anxiety in the 2010-2011 school year. Student's mother (Parent) requested a 504 plan in April 2011, which was agreed upon and implemented in May 2011. However, when Student failed to succeed under the 504 plan, Parent requested more extensive accommodations at a Section 504 meeting in September 2012, but District refused. Student's complaint alleges that during the 2010-2011, 2011-2012 and 2012-2013 school years, District failed to offer Student a FAPE when it: (1) did not meet the substantive requirements of Section 504 as interpreted by the U.S. Office of Civil Rights (OCR), (2) did not meet the procedural requirements of Section 504 as interpreted by OCR, (3) did not meet its "child find" obligation under the Individuals with Disabilities Education Act (20 U.S.C. § 1414, et seq. (IDEA)), (4) did not meet its "child find" obligation under Section 504, (5) changed Student's placement without a reevaluation as required by Section 504 regulations (i.e., District "forced" Student to drop classes rather than put sufficient accommodations in place), (6) predetermined that Student was ineligible for special education and related services without assessing Student, (7) failed to offer Student special education and related services for her depression, and (8) failed to offer Student special education and services for her anxiety disorder. As a resolution, Student seeks compensatory education, partial payment of college tuition and modification of her high school transcript to indicate that she was eligible for special education.

District contends that Student's issues one, two, four, five, six, seven and eight fail to allege sufficient facts to support a claim under the IDEA, and instead, allege violations of Section 504.¹¹

¹⁰ 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).

¹¹ District's NOI does not challenge the sufficiency of Student's issue three.

The gist of Student's complaint is that District failed to comply with both Section 504 and the IDEA in failing to put appropriate supports in place for Student to access the general education curriculum. Although OAH has no jurisdiction to hear Section 504 claims, Student's issues six, seven and eight specifically allege violations of the IDEA by District's failure to identify Student as a student with special needs, to evaluate her for eligibility for special education and services, and to implement an individualized education plan (IEP) designed to meet Student's unique needs and confer educational benefit. The IDEA requires only that a student describe the nature of the problem and facts sufficiently to provide the school district with an awareness and understanding of the issues forming the basis of the complaint. Here, Student has clearly alleged claims arising from failures to identify and evaluate Student when her depression and anxiety interfered with her focus, attention and classroom performance, as well as to provide Student with the special education and related services necessary for her to obtain educational benefit. Therefore, Student's statement of claims six, seven and eight contained in the complaint are sufficient.

Motion to Dismiss

District moves to dismiss Student's issues one, two, four, five, six, seven and eight as outside the jurisdiction of OAH.

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.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) OAH does not have jurisdiction to entertain claims based on Section 504.

As discussed above, issues six, seven and eight sufficiently plead violations of the IDEA by District, and are within the jurisdiction of OAH.

However, Student's issues one, two, four and five allege only violations of Section 504 and its implementing regulations. Therefore, OAH has no jurisdiction to hear these claims, and they will be dismissed.

ORDER

1. Student's issues three, six, seven and eight are sufficiently plead as to District under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Student's issues one, two, four and five do not plead claims within the jurisdiction of OAH and are dismissed.

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).¹²

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.

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

Dated: January 10, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

¹² The filing of an amended complaint will restart the applicable timelines for a due process hearing as to all respondents.