

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT
AND SAN JOAQUIN COUNTY OFFICE
OF EDUCATION.

OAH CASE NO. 2013090535

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 16, 2013, Student filed a Due Process Hearing Request¹ (complaint) naming Lincoln Unified School District (District). On September 18, 2013, District filed a Notice of Insufficiency. On September 20, 2013, the Office of Administrative Hearings (OAH) filed an order finding the first 13 issues in Student's complaint insufficient and permitting Student to file an amended complaint within 14 days. OAH dismissed issues 14 through 33 with prejudice.

On October 8, 2013, Student filed an amended complaint. On October 10, 2013, District timely filed a Notice of Insufficiency and a Motion to Dismiss for Failing to Timely File an Amended Complaint. On October 16, 2013, OAH denied the Motion to Dismiss.

For the reasons set forth below, the issues presented in the first amended complaint are sufficient as reworded by OAH. Student may proceed to hearing solely on the issues articulated in this order.

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).

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).

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 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 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

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

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).

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.)

Under the IDEA, a complaint must be filed within two years of the date a party knew or had reason to know of the fact underlying the basis for the request. (Ed. Code, § 56505, subd. (1).) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

DISCUSSION

Student's amended complaint is comprised of 36 pages including 1) OAH's Mediation and Due Process Hearing Request Form (OAH Form 64), 2) eight pages of correspondence, 3) all 21 pages of an Amended and Supplemental Closing Brief in OAH Case number 2011090998, and 4) two pages with "Proposed Resolutions of Problems." Student's allegations of issues, identified as the "nature of the problem" are set out in subparts in the first six pages. The remaining 30 pages indicate "Facts" by numbers 1 through 45 which purport to set forth the dates, events and people involved, along with when, where, and how the problems occurred.

Despite the lack of organization, and cobbling together of documents, factual allegations can be determined. Student alleges he is over the age of 18 and first became eligible to receive special education services in April 2010 under the category of Specific Learning Disability (SLD) due to a mild reading disorder attributable to a deficit in phonemic awareness.

The problems alleged in the first amended complaint stem from an incident on May 23, 2011, at Lincoln High School that resulted in Student's expulsion following a manifestation determination. The manifestation determination was appealed through an expedited due process hearing (OAH case number 2011090998) and a decision was issued on November 30, 2011.⁸

⁸ Student's request for relief from the manifestation determination that his conduct was not caused by or related to his disability, or was the direct result of District's failure to implement his IEP was denied. The ALJ further found Student did not meet his burden to show the conduct that led to his expulsion was caused by his being emotionally disturbed, and by District's failure to have an IEP in place that listed Student as being ED eligible.

Student makes factual allegations that District referred Student for a “Chapter 26.5” mental health assessment in March 2010. The referral was made due, in part, to Student’s defiance, aggression, anger issues, impulsivity, and failure to take responsibility for his actions. Results from the assessment were reported to an IEP team at a meeting on May 12, 2011. Student qualified for mental health services to address mental health impairments that created emotional and behavioral difficulties that impacted his ability to progress in school. Student began treatment, including prescription medication, before May 23, 2011, but that medication was not properly adjusted at the time of the incident. The IEP team did not consider the mental health information to adjust Student’s IEP or BSP in forming Student’s rehabilitation plan. The manifestation review team did not take all relevant information into consideration at the manifestation determination on May 31, 2011. An incident report dated June 9, 2011 was biased, conflicting and not factual. Actions taken by an administrative panel on June 24 and 27, 2011, discriminated against Student on the basis of his disability. Board action following the manifestation determination occurred in July 2011. The expulsion was appealed and the appeal heard on September 14, 2011. No action was taken, allegedly because the appeal board felt the matter should be heard by OAH. Student filed a due process request on September 27, 2011, OAH case number 2011090998.

On December 14, 2011, Student appealed to the Board for re-enrollment at Lincoln High School but was denied reenrollment due to his rehabilitation plan. On January 8, 2012, Student appealed to the Board of Trustees for re-enrollment, services, program and placement but was denied due to conditions he could not meet without support and services for his special needs. On January 21, 2012, Student was denied placement and an IEP because the prior rehabilitation plan “was wrong for this student.”

The amended complaint states as the “nature of the problem” one issue with subparts A through I. A review of the “nature of the problem” section of the complaint shows that Student has sufficiently alleged problems that are related to the factual allegations above.

Specifically, Student has alleged the following issues, which are restated and contain references to Student’s subparts in parentheses to the extent the issues were repetitive:

1. Whether Student was denied a free appropriate public education for the 2011-2012 school year because he was denied a placement and services based on a disciplinary rehabilitation plan that was developed without consideration of Student’s unique needs, a report from Student’s IEP team, parental input, and Student’s status as qualifying for mental health services under chapter 26.5 (See Complaint Subparts A, E, F, G, and I);

2. Whether Student was denied a free appropriate public education for the 2011-2012 school year because there was no offer of placement and services, including mental health services under chapter 26.5 (See Complaint Subpart B);

3. Whether Student was denied a free appropriate public education for the 2011-2012 school year because the school board, in conducting its expulsion review did not:

- A. follow board policies (See Complaint Subpart C);

- B. consider that there were requests for assessment pending (See Complaint Subpart D);
- C. grant Father's request for a continuance of the expulsion hearing (See Complaint Subpart H).

Student's proposed resolutions include, among other things, compensatory education in the areas of academics, counseling, speech and language therapy, and mental health.

The only determination to be made upon the filing of an NOI is the sufficiency of the complaint on its face. Here, Student has alleged that all of the subparts were denials of a FAPE. An NOI does not determine whether the issues alleged are barred by the statute of limitations or outside of OAH's jurisdiction, but merely determines whether sufficient notice has been provided to the respondent school District. Here, solely as to the issues restated above, Student has met the minimal notice requirements of the IDEA, such that the complaint is sufficient as to those issues only.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii), only as to the issues identified by OAH beginning at page four of this Order.
2. If Student wishes to allege any other issues than those identified in this Order, he must either seek permission from OAH to amend the complaint, or file a separate due process hearing request.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: October 18, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings