

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

MORENO VALLEY UNIFIED SCHOOL
DISTRICT AND CALIFORNIA SCHOOL
FOR THE DEAF.

OAH Case No. 2016060427

ORDER GRANTING MOTION TO
DISMISS ISSUES THREE AND FOUR
OF STUDENT'S COMPLAINT

Student filed a request for due process on June 1, 2016, naming the Moreno Valley Unified School District and the California School for the Deaf (Districts). On June 10, 2016, School for the Deaf filed a motion to dismiss issues three and four of Student's complaint. Neither Student nor Moreno Valley has filed a response to School for the Deaf's motion.

APPLICABLE LAW AND DISCUSSION

Student's complaint contains four issues. The main thrust of the complaint is Student's contention that Moreno Valley and School for the Deaf have denied Student a free appropriate public education by failing to provide her with appropriate programming. Student contends further that Districts are improperly making her graduate even though she has not met California state standards for high school graduates.

Student's Issue three alleges "Whether [Student's] high school diploma, one that she has not earned by completing required curriculum and is not a "regular" high school diploma, should be held pending her completion of high school requirements." School for the Deaf contends that issue three is not an independent legal issue but rather a proposed remedy. School for the Deaf points out that Student's remedy for this issue in effect restates the issue.

School for the deaf is correct that Student's issue three fails to allege any specific conduct by School for the Deaf (or by Moreno Valley) that may have denied Student a FAPE. School for the Deaf's contention regarding issue three is basically an allegation that the issue is insufficient as plead.

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).

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.²

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 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

¹ 20 U.S.C. § 1415(b) & (c).

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

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.].

Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

School for the Deaf's motion to dismiss was filed within 15 days of OAH's receipt of the Student's complaint, and is therefore timely even if construed as a notice of insufficiency. Student's issue three fails to state any type of allegation as to the districts named as respondents in this matter. It fails to put them on notice of any type of issue for hearing. Rather, the issue as presently pleaded merely states a potential remedy for possible FAPE violations alluded to by Student in the factual discussion of her complaint. School for the Deaf's motion to dismiss issue three is therefore granted, without prejudice.

Student's issue four alleges that Districts' joint actions denied Student a FAPE, resulting in the denial of her rights under Section 504 of the Rehabilitation Act of 1973 (Section 504) and under the Americans with Disabilities Act (Title 42 U.S.C. §§ 1201, et seq.) (ADA.)

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", 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 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 does not have jurisdiction to entertain claims based on Section 504 or the ADA. School for the Deaf's motion to dismiss Student's issue four is therefore granted.

ORDER

1. School for the Deaf's motion to dismiss issue three of Student's complaint is granted without prejudice.

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).

2. School for the Deaf's motion to dismiss issue four of Student's complaint is dismissed with prejudice.

3. This matter shall proceed as scheduled as to issues one and two of Student's complaint.

DATE: June 20, 2016

DocuSigned by:

Darrell Lepkowsky

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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings