

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT,
ET AL.

OAH CASE NO. 2009090943

ORDER ON OCDE'S NOI AND
MOTION TO DISMISS ISSUES

On October 6, 2009, Orange County Department of Education (OCDE) timely filed a Notice of Insufficiency (NOI) as to Student's complaint. Specifically, OCDE contends that Student's Issue 1a (regarding IEP confidentiality) is not sufficiently pleaded. OCDE further contends that Issue 1a should be dismissed because it is outside OAH jurisdiction and that Issue 5 should be dismissed because it seeks to reserve Student's rights to raise new issues. For the reasons set forth below, OCDE's NOI and motions to dismiss issues are denied.

NOI

OCDE's motion only challenges the sufficiency of the pleading of one issue, Student's Issue 1a.¹

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The determination of whether a complaint is sufficient is made by looking at the face of the complaint. (§ 1415(c)(2)(D).) In general, fundamental principles of due process entitle the respondent to know the nature of the allegations being made against it, such that respondent may prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

¹ Although referring to "sufficiency" and NOI, OCDE's other contentions (discussed below) actually seek a ruling that certain claims should be dismissed because they are not legally cognizable. Such contentions are not governed by the law relating to pleading standards.

² All statutory citations are to Title 20 United States Code unless otherwise noted.

Here, Student alleges that OCDE violated his procedural right to a FAPE during the 2007-2008 school year by providing confidential information to his former responsible adult after Student's eighteenth birthday. Student proposes remedies of education-related computer equipment and OCDE being held financially responsible for Student's placement. On the face of the complaint, the above allegations satisfy the minimal IDEA pleading standards. OCDE's NOI is denied.

Motion to Dismiss Issues

OCDE further contends that Issue 1a should be dismissed because it arises under the Family Education Rights and Privacy Act (FERPA) and is therefore outside OAH jurisdiction in a special education due process hearing. OCDE contends Issue 5 must be dismissed because it purports to reserve Student's right to amend the complaint.

OAH will 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.... However, there is no authority under the IDEA or state law that requires OAH to hear the equivalent of a motion to dismiss for failure to state a claim on which relief can be granted.

Here, contrary to OCDE's argument, Student's Issue 1a does not reference FERPA at all, but instead alleges that Student was denied a FAPE. Education Code sections 56347 and 56515 incorporate by reference IDEA privacy rights set forth in Title 20 United States Code section 1417(c), a part of the IDEA. Accordingly, because Student's procedural violation allegation can come within the IDEA, OCDE's contention regarding jurisdiction is baseless.

As to Issue 5, although OCDE is correct that it does not raise an IDEA issue, dismissal is unwarranted. Issue 5 at most is Student being overly cautious and seeking to preserve a statutory right under the IDEA to either seek amendment or file a new due process request. Because Issue 5 is harmless surplusage that has no impact on the merits or OCDE's liability, it need not be dismissed.

ORDER

OCDE's NOI and Motions to Dismiss Issues are denied.

Dated: October 7, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings