

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2009100804

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT &
ORDER GRANTING MOTION TO
DISMISS IN PART

On October 14, 2009, Student filed a Due Process Hearing Request¹ (complaint) naming Palcentia-Yorba Linda Unified School District (District) as the respondent.

On October 25, 2009, District filed a combined Notice of Insufficiency (NOI) and Motion to Dismiss as to Student's complaint.

APPLICABLE LAW

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).)

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

In addition, fundamental principles of due process apply to administrative proceedings in special education matters. The respondent is entitled to know the nature of the specific allegations being made against it, such that respondent may be able to 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.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), 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) 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 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or civil rights violations based on Section 1983 of Title 42 of the United States Code.

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), 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 complaint sufficiently alleges three claims with supporting facts and proposed resolutions. The three claims are as follows:

- (1) During the period of October 2007 to October 14, 2009, Did District deny Student a FAPE by failing to address Student’s known and suspected needs in the areas of

auditory processing, cognitive efficiency, working memory, executive functioning, phonemic awareness, adaptive skills, sensory, social skills, speech and language skills and attention?

- (2) During the period of October 2007 to October 14, 2009, did District deny Student a FAPE by failing to develop an IEP that included measurable goals?
- (3) During the period of October 2007 to October 14, 2007, Did District deny Student a FAPE by failing to adequately and appropriately assess Student in all areas of suspected need including sensory integration, behavior regulation and attention?

Student's complaint is sufficiently pled to provide District with the required notice, a description of the problem and the facts relating to the problem. The complaint is sufficiently pled to afford District the opportunity to meaningfully participate in mediation or a resolution session. District alleges that Student has set forth claims that are beyond the statute of limitations; however, the three claims outlined above are clearly within the two year statute of limitations.

The complaint also includes a significant amount of background information that does not appear to be relevant to the three claims outlined above. Student's allegations of background information and procedural history appear to be for information and continuity only and not elements of the three claims set forth above.

Finally, the complaint also contains claims for violations of section 504 of the Rehabilitation Act of 1973 and civil rights violations pursuant to 42 U.S.C. §1983. OAH does not have jurisdiction over section 504 violations or civil rights violations.

ORDER

1. The complaint is deemed sufficient under section 1415(b)(7)(A)(ii).
2. All claims for violations of section 504 of the Rehabilitation Act of 1973 and violation of civil rights pursuant 42 U.S.C. §1983 are dismissed.
2. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: November 3, 2009

/s/

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

