

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT & RIVERSIDE COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2010020079

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT AND
ORDER GRANTING MOTION FOR
PARTIAL DISMISSAL OF
COMPLAINT

On February 1, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming the Val Verde Unified School District (District) and the Riverside County Office of Education (RCOE) as respondents. On February 9, 2010, the District timely filed a Notice of Insufficiency (NOI). On February 10, 2010, the Office of Administrative Hearings (OAH) issued an Order finding Student's complaint insufficient as to parts of Student's Issues One and Three but sufficient as to Issue Two, pursuant to the District's NOI. OAH also dismissed Student's allegations under Section 504 of the Rehabilitation Act of 1973 and Title 42, United States Code section 1983 because those allegations are outside of the jurisdiction of OAH. On February 16, 2010, RCOE timely filed a joint NOI and motion to dismiss portions of Student's complaint. For the same reasons discussed in the February 10, 2010 Determination of Sufficiency of Due Process Complaint, Student's complaint is partially insufficient as to RCOE. Additionally, as discussed below, Student's complaint is deficient as to RCOE with regard to the remaining aspects of the issues pled therein. Finally, RCOE's motion to dismiss those aspects of Student's complaint that are not within the jurisdiction of OAH will be granted as to it as well.

NOI

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 ALJ.⁷

As pointed out in OAH’s February 10th Order, Student’s complaint contains a lengthy history of her educational program, assessments and IEP team meetings both prior to, and during her enrollment in the District. For the time period two years prior to the filing of the complaint, the factual allegations mainly consist of recitals of IEP notes or the content of District assessments. Issue One makes two contentions. First, that Student was denied a FAPE during the statute of limitations because she was not assessed in all areas of suspected disability and second, that the triennial assessment was late and “cursory at best.” Despite the lengthy recitations in the complaint, it is unclear why RCOE, who is never alleged in the complaint to be the local educational agency (LEA) responsible for providing educational services to Student, was obligated to assess Student at any time during the applicable statute of limitations. Student’s complaint specifically identifies the District as the LEA responsible for Student’s education. Therefore, Student’s Issue One is insufficient since it fails to state what areas of suspected disability RCOE should have, but did not, assess either prior to, or as part of, Student’s triennial assessment, and because it fails to give any legal basis for finding that RCOE was obligated to assess Student during the applicable time period. Additionally, Issue One fails to state in what manner the assessments administered by RCOE staff were “cursory” or otherwise inappropriate.

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).

Issue Two alleges that Student was denied a FAPE during the two year statute of limitations because her IEP failed to include adequate services to address her needs in the following areas: speech and language; communication; sensory integration; social skills; behavior; social emotional; parent and staff training; assistive technology; and English proficiency. Student references the fact that at various times during the two years prior to filing of her complaint her IEPS provided that she would attend classes through RCOE. However, it is unclear from the lengthy factual allegations in Student's complaint or in the specific allegations in Issue Two when and why RCOE became responsible for developing Student's IEPS and/or for implementing her educational program. For example, Student states that at a March 29, 2009 IEP meeting there was a discussion of the District contracting with RCOE to address Student's behaviors at school, but it is unclear at what point RCOE became involved in Student's education and to what extent. Student's Issue Two is therefore insufficient as it pertains to RCOE because it fails to state sufficient facts connecting RCOE to the alleged inadequacies in Student's educational program.

Issue Three alleges in part the same issue as Issue Two, that the services in Student's IEP were inadequate. Issue Three also alleges that at all times during the statute of limitations period her IEPS failed to include appropriate: present levels of performance; goals; accommodations; and modifications. OAH previously found that to the extent Student contends the District denied her a FAPE because her IEPS were inadequate to meet her "known" needs the complaint is sufficient, but that Issue Three was insufficient because it failed to state, even by inference, what areas of "suspected needs" were not addressed by the District. Issue three, however, is additionally insufficient as to RCOE because it fails to allege why RCOE was responsible for developing an IEP for Student, and, if responsible, at what point and for which IEPS it became responsible for developing her educational program.

Motion to Dismiss

"Section 504" refers to a claim under the provisions of the 1973 Rehabilitation Act (29 U.S.C. § 794). Title 42, United States Code section 1983 is also referred to as the Federal Civil Rights Act. The jurisdiction of OAH to hear due process claims under the IDEA is limited. OAH only has jurisdiction to consider a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child, or the provision of a FAPE to a child. OAH also has jurisdiction to consider 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 district as to the availability of a program appropriate for a child. (Ed. Code, § 56501, subd. (a).) This limited jurisdiction does not include a school district's alleged failure to comply with Section 504 or the Civil Rights Act. Therefore, RCOE's Motion to Dismiss Student's Section 504 and Title 42, United States Code section 1983 claims as to it shall be granted.

ORDER

1. Student's complaint is insufficiently pled under section 1415(c)(2)(D) as to RCOE. The complaint fails to specifically allege why RCOE was responsible for assessing Student, why, if it did assess her, those assessments were inadequate, and when and why RCOE became responsible for developing Student's IEPs and/or implementing her educational program. Additionally, Issues One and Three are insufficient as to RCOE for the same reasons OAH found them insufficient as to the District in the February 10, 2010 Determination of Sufficiency of Due Process Complaint.

2. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).⁸

3. The amended complaint shall comply with the requirements of section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed as to RCOE and will only proceed as to the issues raised against the Val Verde Unified School District.

5. Student's allegations under Section 504 of the Rehabilitation Act of 1973 and Title 42, United States Code section 1983 as raised against RCOE are outside of OAH jurisdiction and are dismissed.

Dated: February 23, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.