

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010100312

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On November 3, 2010, Student filed an amended Due Process Hearing Request¹ (complaint) naming District. On November 18, 2010, District filed a timely Notice of Insufficiency (NOI) as to Student's Issues 1, 2,3 and 5 raised in the complaint. For the reasons discussed below, the NOI is partially granted and partially denied.

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).

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

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).

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

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

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 Section 1983 of Title 42 United States Code.

DISCUSSION

Student’s amended complaint, which consists of 110 pages, including exhibits relating to Student’s school performance, alleges multiple issues and sub-issues.⁸ Based upon documents attached to the complaint, Student alleges that he is 17 years old and is eligible for special education as “MR” and “ED.” Student recently transferred from high school in Modesto to Breyer High School in the District.

In issue 1(a), Student claims that District denied Student FAPE in his September 23, 2010 IEP by recommending a change in his placement “from a ‘Learning Disabled SDC Class’ to a ‘Severally [sic] Impaired SDC class.’” Student alleges that the offered change in placement denies Student placement in the least restrictive environment (LRE) because

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).

⁸ For purposes of clarity and organization, the issues are separated from factual allegations, which have been identified by letters in the complaint, and are numbered accordingly.

Student has succeeded in a less restrictive environment in his previous high school. Student further alleges that District did not offer Student a continuum of alternative placements, including nonpublic school. As a resolution, Student seeks placement in a non-public school. Therefore, Issue 1(a) is sufficiently pled to put District on notice of this issue.

In issue 1(b) Student alleges that the District denied him a FAPE by failing in his September 23, 2010 IEP to offer him behavior support services, including a behavior aide or student mentor, to help him transition from his previous high school in Modesto to his current high school at Beyer High School. Student contends that Student needs a behavioral aide in order for him to be placed in the LRE and to insure his and other students' safety. Issue 1(b) is sufficiently pled to put District on notice of the issue.

In issue 1(c), Student alleges that he was denied a FAPE because 1) District did not allow his parents to tape his September 23, 2010 IEP team meeting in order to challenge any issues that arose during the meeting, and 2) District failed to have a District representative present at the September 23, 2010 IEP team meeting.⁹ Student alleges, as part of his "Complaint #3A," that District administrator Catherine Pringle was not present at the IEP team meeting; and that District administrator Jerome S. Cohen was not present, but allegedly signed the IEP afterwards as a meeting participant. Student alleges that the IEP meeting offered Student limited alternatives for placement because the "proper individuals did not attend" the meeting to enable parents to participate fully on the issue of placement. Issue 1(c) is sufficiently pled to put District on notice of the issue.

Student alleges in issue 1(d) that District staff presented information about Student's behavior in a negative and discriminatory manner, in violation of Section 504. District contends that this issue is insufficient for purposes of an NOI because it does not allege a claim for relief under the IDEA. District also requests that this issue be dismissed because it is facially outside of OAH jurisdiction. Here, although sufficiently pleaded, Student's claims of violations of Section 504 of the American with Disabilities Act violations are not within the jurisdiction of due process hearings under the IDEA, and are therefore should be dismissed.

Issue 2 describes incidents on September 13, 16, 23, and 30, 2010, involving bullying and lack of aides and classroom staff to handle situations related to those alleged acts. The complaint briefly describes each incident and alleges that Student was assaulted and discriminated against, and that those acts constituted harassment. Issue 2 concludes with a recitation of the reasons for denial of FAPE that were raised in Issue 1, including improper placement, denial of support services to meet Student's unique needs, and failure to provide a safety mechanism for Student in the absence of an aide in order for him to access his education. OAH has no jurisdiction to handle claims that do not involve matters relating to

⁹ Student's "Complaint #3A" also alleges that District failed to have proper District representation at the 9/23/10 IEP team meeting. Therefore, Complaint 3A is combined with and incorporated into Issue 1(c)(2).

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. Although harassment and discrimination claims standing alone would be outside OAH jurisdiction, in this case, Student has alleged that he was denied a FAPE as a result. Therefore, Issue 2 is sufficiently pled to put District on notice of claims under the IDEA that are separate and distinct from the claims relating to placement and services in Issues 1(a) and 1(b).

In Issue 3 Student claims that District denied Student a FAPE by unilaterally changing Student's placement from adaptive physical education to ROTC without parental notification or consent. Student alleges that Parents discovered the change when reviewing Student's school schedule. This issue is sufficiently pled to put District on notice of the issue.

Issue 5 vaguely refers to the original complaint, in which Student requested an expedited hearing. The amended complaint states no facts relating to this issue, other than that Student is considered truant and has not been in school since September 30, 2010. Student seeks expungement of the truancy from his record. Issue 5 is ambiguous as to whether or not Student intends to pursue the issue, and, if so, what the issue and related facts are. Therefore, it is insufficient.

ORDER

1. Issues 1(a), 1(b), 1(c), 1(d), 2, and 3 of Student's amended complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 5 of Student's complaint is insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
3. Although Issue 1(d) is sufficiently pled, it is outside OAH jurisdiction and for that reason is dismissed.
4. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰ Parents are advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH at (916) 263-0880 for assistance in amending their due process hearing request.
5. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1(a), 1(b), 1(c), 2, and 3, as identified in this Order.

Dated: November 22, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings