

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010101204

ORDER DENYING DISTRICT'S
MOTION TO DISMISS;
DETERMINATION OF
INSUFFICIENCY OF STUDENT'S
COMPLAINT

On October 28, 2010, Student filed a Request for Due Process Hearing (complaint), naming the Newport-Mesa Unified School District (District) as the respondent.

On November 8, 2010, District filed a Partial Motion to Dismiss, alleging that three issues alleged in the complaint are not within the jurisdiction of OAH. Specifically, District contends that following issues involve matters outside of the purview of the IDEA:

- (1) Issue 3: "The Personal Problem with Ann Huntington," which alleges that Ms. Huntington, a District administrator, "did the preparation to transfer" Student to a different placement.
- (2) Issue 4: "Covering Up for the P.E. Teacher," which alleges that the teacher brainwashed Student in connection with sexual harassment from another Student, and that Ms. Huntington refused to transfer Student from the school.
- (3) Issue 5: Teachers received orders to drop Student's grades from A+, B, and C, to an F.

OAH received no response to the Motion to Dismiss from Student.

APPLICABLE LAW AND DISCUSSION

Motion to Dismiss

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) [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.)

Although 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....), special education law does not provide for a summary judgment procedure. Here, Issues 3, 4, and 5 do not relate to civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, or any other matters facially outside of the jurisdiction of OAH. Accordingly, District’s motion to dismiss those issues is denied, and all dates currently set in this matter are confirmed. However, given the absence of facts contained in Student’s complaint specifically describing the nature of the problem(s), District’s motion to dismiss will be treated as a Notice of Insufficiency.

Notice of Insufficiency

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).

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.² 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.³

¹ 20 U.S.C. § 1415(b) & (c).

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

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ 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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

Here, Student’s complaint alleges five claims in the complaint, which are all insufficiently pled. Issue 1, which states, “Special education—neglecting the Student—no education,” includes no facts outlining specifically how Student was neglected, when Student was neglected, where Student was neglected, who neglected Student, and how the neglect resulted in a denial of FAPE.

Similarly, Issue 2, which states, “Refusing to cooperate w/parents giving the Student homework,” offers no facts outlining who refused to cooperate with parents, how District refused to cooperate, when District refused to cooperate, and how the refusal to cooperate resulted in a denial of FAPE to Student.

Issues 3, 4, and 5, as set forth above, also fail to include sufficient facts that provide District the required notice of a description of the problem and the facts relating to the problem. Specifically, Issue 3 fails to state how and when Student and/or his parents had a personal problem with Ms. Huntington, and how such action, along with her “preparation to transfer” Student to a different placement, resulted in a denial of FAPE. Also, Issue 4 includes no facts describing how and when District covered up for the P.E. teacher, how and when the P.E. teacher brainwashed Student, how and when sexual harassment issues arose, how and when Ms. Huntington refused to transfer Student to a new school, and how such actions resulted in a denial of FAPE. Finally, Issue 5 fails to state facts describing when teachers received orders to drop Student’s grades, from whom they received the order, and how such actions resulted in a denial of FAPE for Student.

Accordingly, Student’s complaint, in its entirety, is deemed insufficient.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *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.].

⁶ 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).

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).⁷

3. 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. 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. (See Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Dated: November 16, 2010

/s/

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings

⁷ The filing of an amended complaint will restart the applicable timelines for a due process hearing.