

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. 2011020641

ORDER DETERMINING
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On February 15, 2011 Student's Parent (Student) filed a Request for Mediation and Due Process Hearing¹ (complaint) naming San Francisco Unified School District (District). On February 25, 2011, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. For the reasons discussed below, District's NOI is granted with leave to amend.

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 Individuals with Disabilities Education Act (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

The Office of Administrative Hearings (OAH) has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) 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.).

DISCUSSION

Student’s complaint alleges in a single issue that Student was excluded from at least two field trips because his teacher or principal required that he must be accompanied by his grandmother/guardian on field trips. Student alleges that nothing in “his IEP provides for this restriction.” He also alleges that District’s practice or policy of requiring Student’s grandmother to chaperone him on field trips violates IDEA and Section 504. Student seeks as a proposed remedy the right to attend field trips without the restriction of having his grandmother/guardian present.

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).

Student's claim is insufficient because it does not state necessary facts to establish a claim under the IDEA relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. For example, Student does not identify Student's special education eligibility category, which IEP is at issue, whether field trips are provided for in Student's IEP, whether field trips were determined by Student's IEP team to be required for Student to access his education, on what specific dates District denied Student participation in field trips, or on what other basis District denied Student a FAPE. Further, although it is clear that Student is alleging some type of violation of Section 504, that claim is not within OAH's jurisdiction and does not help explain Student's IDEA claim. Without more facts, District does not have sufficient information to prepare for a resolution session, mediation and hearing.

ORDER

1. Student's complaint is insufficiently pled under 20 U.S.C. section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under 20 U.S.C. section 1415(c)(2)(E)(i)(II).⁸ A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁹ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.
3. Student's amended complaint shall comply with the requirements of 20 U.S.C. 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.
5. All dates previously set in this matter are vacated.

Dated: March 02, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

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

⁹ Ed. Code, § 56505.