

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. 2011050789

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

On May 18, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming Placentia-Yorba Linda Unified School District (District) as respondent.

On May 27, 2011, District filed a Motion to Dismiss issue 2 of the complaint and the proposed resolution awarding attorneys fees and a Notice of Insufficiency (NOI) as to issues 2, 5, 6 and 7 of the complaint.

Motion to Dismiss

District contends that OAH should dismiss issue number 2 of the complaint on the grounds that it seeks a determination of issues outside of the jurisdiction of OAH . Specifically, District alleges that the allegations contained in issue number 2 of the complaint pertain to Section 504 of the Rehabilitation Act of 1974 (Section 504) and discrimination claims not within OAH’s jurisdiction. District also contends that Student’s proposed resolution for of attorneys’ fees is subject to dismissal because OAH does not have jurisdiction to award attorneys fees in special education cases. Student contends that issue 2 and the proposed resolution for reimbursement of attorneys fees are within OAH’s jurisdiction.

Parents have 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).) 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.)

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).

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.

Issue 2 alleges that Student was not provided a FAPE because the District failed to provide Student with an aide for computer skills and band class. The allegations do not refer to Section 504 and does not specifically state a claim for disability discrimination or civil rights. Accordingly, Issue 2 is not subject to dismissal.

Student's proposed resolution for reimbursement of attorneys' fees is subject to dismissal because OAH does not have jurisdiction to award attorneys fees in special education cases.

Notice of Insufficiency

District contends that the allegations in issues 2, 5, 6 and 7 of the complaint fail to state sufficient facts and details to put the District on notice of the issues forming the basis of the complaint and to prepare for and/or participate in mediation and a resolution session.

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 named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

² 20 U.S.C. § 1415(b) & (c).

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.

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

Student’s complaint alleges seven claims, some of which are sufficient and some which are insufficient. The issues are discussed below

Issues 1, 3, and 4 are not in dispute and are therefore deemed sufficient. Issues 2 and 5 are also sufficiently pled to put District on notice as to the basis of Student’s claims.

Issue 2 alleges that Student was not provided a FAPE because the District failed to provide Student with an aide for computer skills and band class.

Issue 5 alleges that the rights of Student’s parent to participate in the IEP process were impeded when District failed to include Parental concerns, establish goals, schedule IEP meetings at a date and time convenient to parent and provide appropriate notice of those IEP meetings. The allegation and the facts supporting it provide sufficient notice to District.

With regard to Issue 6, Student alleges concerns regarding requests for curriculum information and a classroom visitation, but does not provide sufficient detail to link the concerns to a denial of FAPE or an issue concerning assessment, identification or placement. Therefore, Student’s issue 6 has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue 7 asserts concerns about confidentiality and the retaking of an elective class. Issue 7 does not provide sufficient detail to link the concerns to a denial of FAPE or an issue concerning assessment, identification or placement. Therefore, Student’s issue 7 has failed to state sufficient facts supporting this claim, and the claim is insufficient.

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).

ORDER

1. The motion to dismiss Issue 2 is denied.
2. The motion to dismiss Student's claim for attorneys' fees is granted without prejudice to Student seeking those fees in a court with jurisdiction to grant them.
3. Issues 1, 2, 3, 4 and 5 of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
4. Issues 6 and 7 of Student's complaint are insufficiently pled under Title 20 United States Code section 1415(c)(2)(D).
5. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II). Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing.
6. 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.
7. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2, 3, 4 and 5 of Student's complaint.

Dated: June 7, 2011

/s/

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

⁸ Ed. Code, § 56505.