

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT; GRANADA HILLS CHARTER
HIGH SCHOOL

OAH CASE NO. 2011081103

ORDER DENYING LAUSD'S MOTION
TO DISMISS

On November 2, 2011, Los Angeles Unified School District (LAUSD) filed a Motion to Dismiss. The Office of Administrative Hearings (OAH) has received no opposition. As discussed below, the motion is denied.

APPLICABLE LAW

Under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.), 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).) 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.) 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.).

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) 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). The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

The pleading requirements of the IDEA 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.¹

DISCUSSION AND ORDER

On August 29, 2011, Student filed a Request for Due Process Hearing (complaint) naming LAUSD and Granada Hills Charter High School as respondents. The complaint sought reassignment of Student from one English class to another. It alleged that Student's assigned English teacher was causing him anxiety and other distress; that Parents and this particular English teacher had a negative pre-existing history involving another sibling; and that Respondents' refusal to reassign Student constituted a denial of a free appropriate public education (FAPE). The complaint alleged that Student had a 504 plan in place to provide accommodations for a medical condition. It did not allege that Student had an individualized educational program (IEP) in place, nor that he had ever been assessed for, or made eligible for special education and related services under the IDEA.

On September 29, 2011, all previously set dates in this matter were vacated and the timelines for hearing established pursuant to Title 20 United States Code section 1415(f)(1)(B) recommenced as of September 29, 2011. Neither respondent filed a Notice of Insufficiency (NOI) within 15 days.

On November 2, 2011, LAUSD filed a Motion to Dismiss on the grounds that OAH lacks jurisdiction over the issues stated in the complaint, because Student does not have an IEP in place, nor has he ever been made eligible for special education and related services under the IDEA. LAUSD interprets the complaint to contain allegations arising solely under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), and therefore argues that OAH does not have jurisdiction.

LAUSD reads the complaint too narrowly, interpreting it to contain allegations arising solely under Section 504. LAUSD did not file a NOI, therefore the allegations of the complaint are deemed sufficient. Under the liberal pleading requirements of the IDEA, the complaint can also be fairly read to allege that Student should have been assessed and/or made eligible for special education and related services under the IDEA, should have had an IEP in place, and that respondents failed in those respects, thus denying him a FAPE. Such

¹ *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.].

allegations would relate to the identification, evaluation, or educational placement of the child, or the provision of a FAPE, and thus fall within OAH's jurisdiction.

Since the sufficient complaint, read broadly, can be construed to allege not only violations of Section 504 but also denial of FAPE under IDEA, LAUSD's motion to dismiss is denied.

IT IS SO ORDERED.

Dated: November 04, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings