

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT AND COVINA VALLEY
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012031078

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND GRANTING
MOTION TO DISMISS ISSUE TWO

On March 27, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming Baldwin Park Unified School District (Baldwin Park District) and Covina Valley Unified School District (Covina Valley District).

On April 9, 2012, Baldwin Park District filed a Notice of Insufficiency (NOI) and a Motion to Dismiss (Motion) as to Student's complaint.

NOI as to Issue One

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

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).

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

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 The complaint must include the date of birth of the student, the address of the residence of the student, and the name of the school the student is attending.⁸

Student’s complaint alleges two claims, which are insufficient. Issue one is: the May 12, 2011 IEP and amendments did not constitute an appropriate education to meet Student’s unique needs. Issue two is: a violation of Section 504 and the ADA.

First, Student’s complaint is insufficiently pled in that it fails to provide Baldwin Park District with the following requisite facts: his date of birth and the name of the school he is attending.

Second, Student’s complaint is insufficiently pled in that it fails to provide Baldwin Park District with the required notice of a description of the problem and the facts relating to the problem. Issue One alleges generally that Student was not provided a FAPE, however the only related facts alleged are that the Districts did not appropriately consider Student’s

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 20 U.S.C. § 1415(b)(7)(A)(ii).

communication needs. This allegation is so general that Baldwin Park District cannot tell if Student is alleging a specific problem about placement, related services, accommodations, or some other possible issue like annual goals. Therefore, because the allegation is so general and not supported by specific facts, it is insufficient.

Student's proposed resolutions are sufficient, and they consist of: an order compelling Districts to refer Student to the California School for the Deaf and to provide Student compensatory education and services are sufficient. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Motion to Dismiss Issue Two

Student's Issue Two alleges the Districts violated Section 504 of the Rehabilitation Act of 1973 and the ADA (29 U.S.C. § 701 et seq.). Baldwin Park District correctly contends these allegations must be dismissed because OAH lacks 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 [hereafter *Wyner*].) OAH does not have jurisdiction over section 504 claims and civil rights claims, and these claims must be dismissed.

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).⁹
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.
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.
6. Issue Two is dismissed for lack of jurisdiction.

Dated: April 12, 2012

/s/

CLARA L. SLIFKIN
Administrative Law Judge
Office of Administrative Hearings

⁹ The filing of an amended complaint will restart the applicable timelines for a due process hearing.