

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEAN VIEW ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2012050507

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

On May 9, 2012, Parent on behalf of Student filed a Request for Mediation and Due Process Hearing (complaint)¹ naming Ocean View Elementary School District (District) as respondent. On May 11, 2012, OAH issued a scheduling order setting mediation for June 14, 2012, a prehearing conference for June 25, 2012, and the hearing for July 3, 2012.

On May 24, 2012, District timely filed a motion to dismiss and a notice of insufficiency.

APPLICABLE LAW

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.)

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.) or Section 1983 of Title 42 United

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).

States Code. 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.

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).

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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (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.” (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*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.].) Whether the complaint is sufficient is a matter within the sound discretion of the ALJ. (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).)

DISCUSSION

Student’s complaint begins with a factual summary, referring to one individualized education program (IEP) meeting of January 27, 2012. Student does not refer to any other IEP in the complaint. Student then alleges three issues for determination. Each issue is discussed below, relative to both District’s motion to dismiss and notice of insufficiency.

Issue 1 – Procedural Violations

Student's first issue is for denial of a free appropriate public education (FAPE) because District allegedly violated parent's procedural rights with respect to the development of, and request for consent to, an amended IEP. Student alleges two bases for the assertion. District would not agree to parent's acceptance of one-to-one support unless parent also agreed to an alleged change in the nature of the service. The other basis is that the District refused to explain the proposed change, or the reason for such change, to the parent.

District contends that Issue 1 is insufficient because it makes no reference to any IEP or IEP meeting, and is otherwise lacking in specific information. However, the only IEP to which Student refers is the January 27, 2012 IEP. Since Student does not mention any other IEP, the complaint is sufficiently clear that Student's assertions refer solely to the January 27, 2012 IEP. Also, Issue 1 sufficiently informs the District of the factual bases of the alleged substantive procedural violations to enable it to prepare for the hearing and participate in resolution session and mediation. Issue 1 is sufficient.

Issue 2 – Substantive FAPE Denial

Issue 2 asserts that District substantively denied, and would continue to substantively deny, Student a FAPE for six (6) reasons. The first reason is that District's proposed services and goals in receptive and expressive language are not calculated to provide meaningful progress; Student describes the basis for its assertion. The second reason is that District failed to offer appropriate goals or services in the area of reading; Student explains why in detail. Third and fourth reasons are that District failed to provide adequate goals or instruction in the area of written language and math, respectively. Student provides details for both assertions. Fifth, District failed to obtain needed training for staff in the agreed upon implementation of direct instruction (DI) curricula, describing how DI curricula efficacy has been reduced. The final basis for the alleged FAPE denial is that District did not take effective steps to pursue key behavioral needs of Student and has proposed inadequate goals for monitoring such behavior needs. Student describes the behavioral needs District failed to address.

District refers to a March 8, 2011 settlement agreement with Student, which included unequivocal waivers by Student, up to and including June 30, 2011. District contends that some of the language in Issue 2 (and some other areas of the complaint) might be read as referring to issues which predate the waiver protection and, therefore, require dismissal. However, the complaint does not assert any claims based upon District conduct which predates June 30, 2011. The District's motion to dismiss on the basis of the settlement agreement is unnecessary and is denied. Should Student attempt to assert or prove up claims which predate the waiver, District may assert the settlement agreement at that time.

District also contends that Issue 2 is insufficient because it makes no reference to any IEP or IEP meeting, and is otherwise lacking in specific information. However, the only IEP to which the complaint refers is the January 27, 2012 IEP. Therefore, Issue 2 is sufficiently

clear that Student's assertions refer to the January 27, 2012 IEP. Also, the complaint describes the facts which Student asserts in support of the various bases for Issue 2. Such factual assertions are sufficient to enable the District to prepare for the hearing and participate in resolution session and mediation. Issue 2 is sufficient.

Issue 3 – Section 504

Issue 3 asserts violation of Section 504 of the Rehabilitation Act of 1974. OAH does not have jurisdiction over Section 504 and, therefore, Issue 3 is dismissed.

ORDER

1. District's motion to dismiss all claims which predate the March 8, 2011 settlement agreement's waiver to June 30, 2011, is denied as unnecessary.
2. Issues 1 and 2 are sufficient.
3. District's motion to dismiss Issue 3 is granted, because OAH lacks jurisdiction.

IT IS SO ORDERED.

Dated: May 29, 2012

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings