

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2014060619

ORDER GRANTING MOTION TO
DISMISS 504 CLAIMS AND
DETERMINING SUFFICIENCY OF
DUE PROCESS COMPLAINT

On June 10, 2014, Student filed a Due Process Hearing Request¹ (complaint) naming Norwalk-La Mirada Unified School District (District).

On June 19, 2014, District filed a Motion to Dismiss Student's 504 claims and a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

Motion to Dismiss 504 Claims

The Office of Administrative Hearings (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.).

Notice of Insufficiency

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,

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).

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

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

DISCUSSION

In Student’s complaint, he refers to District’s denial of a 504 plan at the June 2012 individual education program (IEP) team meeting and the provision of a 504 plan in November 2013. Any claims that Student may have regarding Student’s 504 plan are dismissed as OAH does not have jurisdiction over 504 claims.

District challenges as insufficient Student’s broad allegation that District failed to provide Student a FAPE for the two year statutory period, June 10, 2012 through June 10, 2014. The facts alleged in Student’s complaint are sufficient to put District on notice of the issues forming the basis of the complaint. Student’s complaint identifies two IEP team meetings. Student identifies an initial IEP meeting of June 20, 2012, where, after District

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.

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).

conducted Parent requested assessments, it denied Student eligibility. These allegations support a claim that Student was denied a FAPE when District failed to make him eligible in June 2012. Based upon Student's claim that he was denied a FAPE for the statutory period which includes the June 2012 IEP, District is on notice that Student is challenging the eligibility determination of the IEP team, and the information District IEP team members relied upon, including District assessments. Student's complaint provides facts which support Student's claim that he should have been made eligible and provided special education and related services, including his ongoing behavior and academic challenges.

Student limits his issues to FAPE claims, although the complaint references Student's expulsion in December 2012. A parent who disagrees with any decision regarding the manifestation determination may request a hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.522.(2006).) Here, Student does not appeal District's expulsion, which would require an expedited proceeding, and only refers to the expulsion to show a pattern of behavior in support of Student's FAPE claims.

Student challenges the second IEP team meeting of May 2014, where it made Student eligible, but failed to follow the assessor's advice, and offered an inappropriate program. Student refers to a suspension at or around the May 2014 IEP team meeting to show his ongoing behavior challenges.

Student also requests remedies, including a nonpublic school, nonpublic agency tutoring and counseling, which are consistent with his FAPE claim.

Therefore, District is on notice of the basis of Student's claim that he was denied a FAPE during the statutory period, and Student's complaint is sufficient.

ORDER

1. District's Motion to Dismiss Student's 504 claims is granted and Student's 504 claims are dismissed.

2. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

DATE: June 23, 2014

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings