

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015020841

ORDER GRANTING IN PART
DISTRICT'S MOTION TO STRIKE
PORTIONS OF STUDENT'S
PREHEARING CONFERENCE
STATEMENT

On February 10, 2015, Student filed a Request for Due Process Hearing complaint with the Office of Administrative Hearings, naming Irvine Unified School District.

On March 25, 2015, each party filed and served its Pre-hearing Conference Statement.

On March 26, 2015, District filed a Motion to Strike portions of Student's Prehearing Conference Statement, alleging that Student included an additional issue to be determined at hearing and a request for five additional remedies. OAH received no response to the Motion to Strike from Student.

APPLICABLE LAW AND DISCUSSION

A party may file a due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free and appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The complaint must contain a description of the nature of the problems, including facts relating to such problems. The complaint must also contain a proposed resolution of the problem to the extent known and available to the parties at the time. (20 U.S.C. §§ 1415 (b)(7)(a)(III),(IV).)

These requirements provide parties with sufficient information to respond to the complaint, and enable them to participate in a resolution session and mediation. Furthermore, "fundamental principles of due process apply to administrative proceedings in special education matters." (*Student v. Los Angeles Unified School Dist.*, OAH Case No. 2010050500 (October 21, 2010). A party against whom a complaint is filed is entitled to know the nature of the specific allegation made against it, such that the party can prepare an

appropriate defense. *Id.* (citing *Tadano v. Manney* (9th Cir. 1947) 160 F.2d 655, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F. 2d 605, 608.)

Student's complaint contains a single issue regarding Child Find. Student's Prehearing Conference Statement contains an Issue Two alleging District failure to provide Student with all educationally related records. There is no factual information or discussion of Issue Two in Student's complaint which would place District on notice of this allegation. Therefore, Issue Two is stricken from Student's Prehearing Conference Statement, without prejudice, in the event of a valid motion to amend Student's complaint.¹

Student's Prehearing Conference Statement contains additional proposed remedies which were not listed in Student's complaint. The IDEA, however does not apply a limitation on remedies, as it requires only that proposed resolution of the problem be stated to the extent known and available at the time of filing the complaint. Further, appropriate remedies are clearly within the equitable power of OAH. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. The purpose of compensatory education is to "ensure that the student is appropriately educated within the meaning of the IDEA." (*Id.*) Although the ALJ has broad equitable powers to "craft" a remedy, the award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid ex rel. Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.)

In this matter, Student has included additional proposed remedies for consideration at hearing. All of the proposed resolutions apply to Student's Issue One, of which District received full notice. The contention that District has not been provided opportunity to consider all possible remedies prior to hearing is misplaced, as it is noted District failed to take advantage of the mediation process. In any event, the ALJ is not limited in crafting appropriate equitable relief for either party, subject to proof at hearing, regardless of what remedies have been sought by Student. Therefore, District's Motion to Strike Student's additional proposed remedies is denied.

ORDER

¹ If Student wishes to include the allegations included in the stricken Prehearing Conference Statement, Student will need to file an amended complaint. The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

1. District's Motion to Strike Issue Two from Student's Prehearing Conference Statement is granted without prejudice for Student to file an amended complaint.

2. District's Motion to Strike inclusion of additional proposed remedies from Student's Prehearing Conference Statement is denied.

DATE: April 3, 2015

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings