

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015110140

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENIAL OF
DISTRICT'S MOTION TO DISMISS

On November 3, 2015, Student filed a Request for Due Process Hearing¹ (complaint) with the Office of Administrative Hearings naming Capistrano Unified School District. On November 19, 2015, District filed a Notice of Insufficiency and Motion to Dismiss Portions of Student's complaint. On November 20, 2015, Student filed a Response to District's Motion to Dismiss. Each of District's requests is discussed individually.

1. Determination of Sufficiency:

APPLICABLE LAW AND DISCUSSION

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 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.)

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

Student’s complaint alleges three claims in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

Issues One and Three are sufficiently pled to put District on notice as to the basis of Student’s claims. Further, District has not requested that Issues Two and Three be dismissed as insufficient.

With regard to Issue Two, Student fails to allege sufficient facts to allege an exception to the two year statute of limitations (20 U.S.C. § 1415(f)(3)(D); Ed.Code, § 56505, subd.(l).) Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Student’s proposed resolution request includes a request for independent educational evaluations. 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).) District contends that the request for independent educational evaluations is directly related to Issue Two, which has been determined insufficient. Issues One and Three, however, remain viable. OAH has jurisdiction to make equitable remedies which are supported by the factual findings and conclusions of law determined at hearing. The proposed resolution for independent educational evaluations stated in Student’s complaint is well-defined, and Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

2. Motion to Dismiss

APPLICABLE LAW AND DISCUSSION

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.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (ADA), (Title 42 U.S.C. §§ 1201, et seq.) or the Unruh Civil Rights Act (Civ. Code, § 51).

District's Motion to Dismiss contends that OAH does not have jurisdiction to adjudicate Student's Issues One and Three based upon Student's eligibility and factual allegations based upon Section 504. District's conclusion, however, only requests dismissal of Student's Issue Two. As indicated above, Student's Issue Two is deemed insufficient. District's request for dismissal of Issue Two is currently moot, and therefore denied without prejudice.

District's contentions regarding 504 allegations in Student's Issues One and Three are unfounded. Student's complaint makes no request for OAH to adjudicate a Section 504 matter. Student's factual allegations, which include reference to Section 504 events, are offered to support Student's claims under IDEA as contained in Student's complaint. District's request to dismiss Student's Issues One and Three is denied.

ORDER

1. Issues One and Three of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue Two of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).²
4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One and Three in Student's complaint.
6. District's Motion to Dismiss Student's Complaint is denied.

DATE: November 23, 2015

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

² The filing of an amended complaint will restart the applicable timelines for a due process hearing.

