

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEHACHAPI UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016030580

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENYING
REQUEST FOR OFFICIAL NOTICE OF
ADMINISTRATIVE RECORD
WITHOUT PREJUDICE

On March 11, 2016, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings naming Tehachapi Unified School District.

On March 21, 2016, District timely filed a Notice of Insufficiency as to Student's complaint.

On March 21, 2016, District also filed a Request for Judicial Notice in support of the NOI pursuant to California Evidence Code, sections 452(a), (c), and (d). District requested that OAH take notice of the administrative record in the consolidated matter of OAH Case Nos. 2015030954 and 2015050934 to determine the sufficiency of Issues 1 and 2 in Student's complaint. The administrative record in the previous matter includes Administrative Law Judge Elsa Jones's decision, issued on October 2, 2015, and a stay put order, dated March 26, 2015, regarding Student's March 17, 2014, and November 14, 2014 individualized education programs.²

OAH deems District's Request for Judicial Notice to be a Request for Official Notice of the October 2, 2015 decision in OAH Case Nos. 2015030954 and 2015050934, and the related stay put order.

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).

² Student's complaint and District's NOI both state that on December 4, 2015, Student filed an appeal of Case Nos. 2015030954 and 2015050934 in the United States District Court for the Eastern District of California. The parties did not identify a case number for the appeal.

Student did not file a response to District's request for judicial notice.

APPLICABLE LAW

Sufficiency of the Complaint

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.)

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.)

Judicial notice shall be taken of the decisional, constitutional, and public statutory law of California and of the United States, and the provisions of any charter described in Section 3, 4, or 5 of Article XI of the California Constitution. (Evid. Code, § 451, subd. (a).)

DISCUSSION

Student's complaint alleges four issues, two of which are sufficient and two of which are insufficient. Issues 1 and 2 relate to District's alleged failure to implement Student's March 17, 2014 and November 14, 2014 individualized education program as to mainstreaming opportunities in a general education classroom. Issues 3 and 4 relate to parents' ability to meaningful participate in the October 19, 2015, October 30, 2015, and March 3, 2016 IEP team meetings. Each issue is discussed below.

Issue 1 alleges that District denied Student a FAPE by failing to implement 30 minutes of mainstreaming in a general education classroom, and associated general education opportunities, as required by her March 17 and November 14, 2014 IEP's.

Issue 2 similarly alleges that District denied Student a FAPE in the least restrictive environment by failing to implement 30 minutes of mainstreaming in a general education classroom, and associated general education opportunities, as required by her March 17 and November 14, 2014 IEP's.

The complaint sufficiently describes the problem, and facts relating to the problem. Student alleges that on October 9, 2015, her attorney requested that District implement stay put services as to the mainstreaming opportunities offered in the March 17, 2014 IEP. Student alleges that the March 17, 2014 IEP, the November 14, 2014 addendum to that IEP, and OAH's March 26, 2015 stay put order establishes that District was obligated to implement the mainstreaming opportunities at Cummings Elementary School during the 2015-2016 school year. Student alleges that District failed to assign Student a general education teacher, failed to provide any mainstreaming in a general education classroom, and failed to include Student in general education activities, such as field trips.

District objects to Issues 1 and 2 on three grounds. First, District contends that the March 17, 2014 IEP, as amended by the November 14, 2014 IEP, did not offer mainstreaming in a general education classroom. District's contention relates to the merits of the case but not the sufficiency of the complaint. Second, District contends that the issues are barred by the doctrine of collateral estoppel, because OAH's October 2, 2015 decision determined that Student's behaviors would negatively impact the learning of students in a general education setting. District's contention relates to a motion to dismiss but not the sufficiency of the complaint. Third, District contends that Issues 1 and 2 relate to enforcement of a prior stay put order, and that OAH lacks jurisdiction to enforce that order. District's contention relates to a motion to dismiss but not the sufficiency of the complaint.

Issues 1 and 2 are sufficiently pled to put District on notice as to the basis of Student's claims. Indeed, District's objections to these issues clearly indicate that it was on notice of the description of the problem, and the facts relating to the problem. District's contention that the issues are barred by collateral estoppel or by lack of jurisdiction should be addressed through a motion to dismiss separate and apart from this determination of sufficiency of the complaint.

Issue 3 alleges that District denied Student a FAPE by denying her parents the opportunity to meaningfully participate in the October 19, 2015, October 30, 2015, and March 3, 2016 IEP team meetings by refusing to invite or include people requested to be present by the parents, who have knowledge and special expertise about Student.

The complaint provides no description of this problem, and the facts relating to the problem. Instead, the complaint simply lists Issue 3 towards the end of the complaint. District contends that the complaint is insufficient, because it fails to identify the people that District allegedly refused to invite to the IEP team meetings.

With regard to Issue 3, Student failed to allege the professionals who District allegedly refused to invite to the October 19, 2015, October 30, 2015, and March 3, 2016 IEP team meetings (e.g., general education teacher, school psychologist, independent educational evaluator) but Student need not identify the names of the individuals. Therefore, Student failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue 4 alleges District denied Student a FAPE by denying her parents the opportunity to meaningfully participate in the October 19, 2015, October 30, 2015, and March 3, 2016 IEP team meetings by refusing to address topics of concern raised by Student's parents.

The complaint provides no description of this problem, and the facts relating to the problem. Instead, the complaint simply lists Issue 4 towards the end of the complaint. District contends that the complaint is insufficient, because it fails to identify the topics of concern raised by Student's parents.

With regard to Issue 4, Student failed to allege generally the topics of concern raised by Student's parents during the October 19, 2015, October 30, 2015, and March 3, 2016 IEP team meetings that District did not respond. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Request for Official Notice

OAH's decision, dated October 2, 2015, and the related stay put order, dated March 26, 2015, in OAH Case Nos. 2015030954 and 2015050934 were not relevant for determining the sufficiency of the complaint. For that reason, District's request for official notice is denied without prejudice at this time but may be reconsidered in ruling on District's motion to dismiss Issues 1 and 2.

ORDER

1. Issues 1 and 2 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 3 and 4 of Student's complaint are 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).³

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 1 and 2 in Student's complaint, unless those issues are dismissed pursuant to a subsequent order.

6. District's request for official notice of the decision and stay put order in Case Nos. 2015030954 and 2015050934 is denied without prejudice.

DATE: March 25, 2016

DocuSigned by:

Caroline Zuk

CAROLINE A. ZUK

Administrative Law Judge

Office of Administrative Hearings

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.