BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SAN MATEO-FOSTER CITY SCHOOL DISTRICT.	OAH CASE NO. 2013110232 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; ORDER DISMISSING CLAIMS BEYOND THE JURISDICTION OF OAH

On November 5, 2013, Student's parents on behalf of Student (Student) filed a due process hearing request[1] (complaint) naming the San Mateo-Foster City School District (District).

On November 15, 2013, the District filed a notice of insufficiency (NOI) as to Student's complaint. On the same date, the District filed a motion to dismiss several of the claims in the complaint on that basis that they are beyond the jurisdiction of the Office of Administrative Hearings (OAH).

APPLICABLE LAW

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, 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

[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).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

The District's NOI challenges issues one, seven, and eight in Student's complaint. The motion to dismiss seeks to dismiss issues two, four, and nine, which raise claims under Section 504 of the Rehabilitation Act of 1973 (Section 504).

A review of Student's complaint shows that the District's motion to dismiss is correct. Issues two and nine allege claims arising under Section 504. Those claims are outside the jurisdiction of OAH and must be dismissed. Issue four is ambiguous as to whether Student intended to allege claims under Section 504 or the Individuals with Disabilities Education Act. It is not sufficiently pled.

With respect to the District's NOI, issue one is sufficiently pled. It alleges that the District failed to find Student eligible for special education and develop an individualized education program (IEP) for him. It appears to apply during the entire two-year statute of limitations period. For example, the allegation mentions a November 2011 assessment, which would have occurred right around the beginning of the two-year period.

---

[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).

Issues seven and eight are not sufficient. They make reference to various events and state the District should have provided prior written notice and copies of procedural safeguards to Student's parents. However, no dates are given for when these events occurred. Those issues are not sufficiently pled.

ORDER

1. Issues two and nine of Student's complaint are hereby dismissed.

2. Issues four, seven and eight 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).[8]

4. The amended complaint shall comply with the requirements of Title 20 United States Code 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, three, five, and six in Student's complaint.

Dated: November 21, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

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