BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BUCKEYE SCHOOL DISTRICT.	OAH CASE NO. 2013051083 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 24, 2013, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Buckeye School District (District) as the respondent.

On May 30, 2013, the District filed a Motion for Partial Dismissal, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973; and that OAH does not have jurisdiction to hear Student's fifth issue on promotion. On June 4, 2013, OAH granted the District's Motion to Dismiss all claims made in issues one, two, three, four and five which relate to any claims made pursuant to Section 504 of the Rehabilitation Act or any other federal or state law unrelated to the IDEA. OAH denied the District's motion to dismiss issue five in its entirety.

On June 7, 2013, the District filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[1] 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

[1] 20 U.S.C. § 1415(b) & (c).

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.[2] 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.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and mediation.

Student's complaint contains five issues. Issue one is whether the District deprived Student of a free appropriate public education (FAPE) by failing to satisfy its child find obligations to Student during the 2010-2011 school year. In issue two, Student also alleges that the District failed to satisfy its child find obligations toward Student during the 2011-2012 school year. In issue three, Student alleges that the District failed to satisfy its child find obligations to Student during the 2012-2013 school year. In issue four, Student alleges

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[2] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[3] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[4] Sen. Rep. No. 108-185, *supra*, at p. 34.

[5] *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.].

[6] 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).

that she is entitled to reimbursement for costs to attend a residential treatment center (RTC) where she was unilaterally placed after the District failed to provide her with a FAPE. In issue five, Student contends that the District is inappropriately promoting her to the ninth grade which deprives her of a FAPE.

Student requests remedies in the form of compensatory education, reimbursement for educational placement, services and for independent educational evaluations, and for retention of Student in the eighth grade.

The District contends that issue one, which pertains to the 2010-2011 school year, falls outside of the applicable two years statute of limitations and should therefore be dismissed in its entirety. The District fails to explain why any part of this issue which lies within the two years statute of limitations, e.g. from May 24, 2011, forward, should be dismissed. Regardless, whether an exception to the two years statute of limitations exists requires an evidentiary hearing. Here, the District has sufficient notice regarding the Student's allegation that the District deprived her of a FAPE by failing to satisfy its child find obligations during the 2010-2011 school year so that it may participate in a resolution session and mediation. The NOI is therefore denied as to Student's issue one.

The District asserts that issues two, three and four are contrary to the District's understanding of facts related to this matter, and should therefore be dismissed. It is clear from the face of the District's NOI that it has an understanding of the issues forming the basis of Student's allegations that the District failed to satisfy its child find obligations toward Student during school year 2011-2012 and 2012-2013 school years, and that Student is requesting reimbursement for costs associated with an RTC. In the NOI, the District argues facts which are contrary to Student's allegations. However, an NOI is not the proper vehicle in which to argue the merits of a party's case. Rather, an evidentiary hearing is required. The NOI is therefore denied as to Student's issues two, three and four.

Finally, the District asserts that OAH lacks jurisdiction over issue five which deals with Student's allegation that her being promoted to the ninth grade violates the IDEA and will deprive her of a FAPE. This identical assertion was included in the District's May 30, 2013 Motion to Dismiss, and was denied by OAH on June 4, 2013. The District again contends that since Student is a general education student, questions of promotion do not fall under the IDEA. The District again completely ignores the nucleus of Student's allegation. Student contends that she is being denied a FAPE precisely because the District has ignored its child find obligations and failed to conduct special education eligibility assessments which has deprived Student from being eligible for special education and related services. Student further contends that the failures of the District has resulted Student in not obtaining the skill level necessary to receive educational benefit from being placed in a general education ninth grade class. Therefore, the NOI is denied as to Student's issue five.

ORDER

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

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: June 07, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings