BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ADELANTO ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2015090809 ORDER (1) DETERMINING DUE PROCESS COMPLAINT CLAIM 1 TO BE SUFFICIENT AND (2) GRANTING MOTION TO DISMISS CLAIMS 2, 3, 4 AND 5

On September 15, 2015, Parent on behalf of Student filed a due process hearing request[1] (complaint) naming Adelanto Elementary School District. On September 22, 2015, District filed a notice of insufficiency as to Claim 1 of Student's complaint, and a motion to dismiss Claims 2, 3, 4, and 5 of Student's complaint as outside of OAH jurisdiction.

Notice of Insufficiency as to Claim 1

APPLICABLE LAW AND DISCUSSION

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]

In this case, Student alleges that he exhibits behaviors as a manifestation of his qualifying disability. He also alleges that throughout the 2013-2014 and 2014-2015 school years, District failed to update or otherwise address these behaviors, and instead repeatedly segregated Student from the rest of his classmates, sent him to the principal's office, sent him home, and ultimately refused to enroll Student at all for the 2015-2016 school year. He specifically alleges in his first claim for relief that: he was not adequately assessed; the November 1, 2013 and November 14, 2014 individualized education programs were drafted by fewer members of the IEP teams than legally required; the IEP's did not contain sufficient goals; and the placement and services offered in those IEP's denied him a free appropriate public education.

The facts alleged in Student's complaint are sufficient to put District on notice of the issues forming the basis of the first claim. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's Claim 1 is sufficient.

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[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).

APPLICABLE LAW AND DISCUSSION

The purpose of the IDEA is to "ensure that all children with disabilities have available to them a free appropriate public education" and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to entertain claims based on the American with Disabilities Act (42 U.S.C. § 12131, *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*), federal civil rights laws, or tort claims arising under federal or state law.

Student's Claims 2, 3, 4, and 5 are solely based upon alleged violations of the ADA and Section 504, Title 42 U.S.C. section 1983, and tort claims under California law, and do not raise any issues arising under the IDEA. Therefore OAH lacks jurisdiction to adjudicate those claims, and Claims 2, 3, 4, and 5 must be dismissed.

ORDER

1. Student's Claim 1 is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Claims 2, 3, 4, and 5 of Student's complaint are dismissed. This matter shall proceed to hearing on the issues presented in Claim 1 of Student's complaint only.

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

DATE: September 25, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings