BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013060562 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND ORDER GRANTING MOTION TO DISMISS, IN PART

On June 12, 2013, Student's parent on behalf of Student (Student) filed a Due Process Hearing Request (complaint),[1] stating six (6) problems and naming the Sacramento City Unified School (District).[2]

On June 19, 2011, the District timely filed a Notice of Insufficiency (NOI) as to Student's entire complaint. District also filed a Motion to Dismiss as to each of the complaint's six problems. This order addresses both District's NOI and Motion to Dismiss.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[3] 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] 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] In his complaint, Student named Jonathan Raymond, Olivine Robert, Jess Serna, Becky Bryant, and Cancy McArn as respondents. However, pursuant to a June 18, 2013 Notice Concerning Parties, Presiding Administrative Law Judge Judith A. Kopec determined that the named individuals were not proper parties, pursuant to Education Code section 56501, subdivision (a). Therefore, District is the sole respondent.

[3] 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. [4] 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.

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]

OAH may grant motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc…..

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents.[8] 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."[9] The jurisdiction of OAH is limited to these

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[4] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[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).

[8] (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.)

[9] (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

matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

This limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Id.* at p. 1030.) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing, and raised, inter alia, six issues as to the school district's alleged failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, found that the issues pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling was upheld on appeal. The *Wyner* court held that "the proper avenue to enforce SEHO orders" was the California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.), and that "a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing." (*Wyner, supra*, 223 F.3d at p. 1030.)

More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541, the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a FAPE as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION

In Problem One, Parent refers to a September 7, 2011 "incident" which, when read within the context of other portions of the complaint, appears to be the date of a settlement agreement with District involving Student in a prior due process complaint. Parent claim he was "deceived" regarding his request that Student be placed at a lower grade level. Parent also states that District did not provide Parent with a Chinese version of the settlement agreement until June 2013.

District seeks an order dismissing Problem One, noting that OAH does not have jurisdiction over issues regarding breach of a prior due process settlement agreement. However, as noted in *Pedraza,* OAH does have jurisdiction to adjudicate a claim that a violation of a mediated settlement agreement resulted in a denial of a FAPE. Here, the complaint refers to a different placement which Parent implies may have been promised in the settlement agreement. It is unclear if the placement of Student in a lower grade was a

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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].)

term of the settlement agreement, that District breached the settlement agreement, and that such breach denied Student a FAPE. District's motion to dismiss Problem One is denied because it is not clearly beyond OAH jurisdiction. However, Problem One does not provide a sufficient description of the nature of the problem relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE. District's notice of insufficiency as to Problem One is granted.

Problem Two makes a number of assertions regarding the District's processing of Parent's uniform complaint and makes no allegations regarding Student or receipt of a FAPE. Problem Two's assertions do not fall within OAH jurisdiction. District's motion to dismiss Problem Two is granted.

Problem Three makes assertions regarding the District's processing of Parent's uniform complaint and/or District's response to Parent's questions regarding a copy of the prior agreement. Problem Three does not contain any allegations regarding Student or receipt of a FAPE. Problem Three's assertions do not fall within OAH jurisdiction. District's motion to dismiss Problem Three is granted.

Problem Four complains that the District's superintendent did not sufficiently reprimand his staff. This issue does not fall within OAH jurisdiction. District's motion to dismiss Problem Four is granted.

Problem Five accuses some of District's staff of "shameful and disgraceful" conduct, asking that District "re-educate" its staff. This issue does not fall within OAH jurisdiction because it does not allege an issue regarding the provision of a FAPE to Student. District's motion to dismiss Problem Five is granted.

In Problem Six, the complaint makes a number of assertions regarding the inappropriate exercise of authority by a District employee and, when read in light of the proposed solution, appear to relate to the continued provision of a tutor that is necessary for Student to receive a FAPE. District's motion to dismiss Problem Six is denied because it is not clearly beyond OAH jurisdiction. However, Problem Six does not provide factual assertions regarding the provision of a tutor, if such related service is part of an IEP, what IEP is at issue, and what District conduct prevents Student from receiving a FAPE. Problem Six does not provide a sufficient description of the nature of the problem concerning the identification, evaluation, or educational placement of Student, or the provision of a FAPE. District's notice of insufficiency as to Problem Six is granted.

ORDER

1. Student's Problems 2, 3, 4, and 5 are not within OAH's jurisdiction and are dismissed.

2. Student's Problems 1 and 6 are insufficiently pled under section Title 20 United States Code 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).[10] The amended complaint is intended to give Student an opportunity to allege problems One and Six with sufficient facts to put District on notice of what Student claims and is seeking.

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 complaint will be dismissed.

6. All dates previously set in this matter are vacated.

7. A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.[11] Student's parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. If Student's parents wish mediator assistance, they may either write to OAH in Sacramento, or call OAH at (916) 263-0880 to make the request.

Dated: June 24, 2013

/s/
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings

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

[11] Ed. Code, § 56505.