

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014071048

ORDER DETERMINING
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DISMISSING
ISSUES OUTSIDE OAH
JURISDICTION

On July 22, 2014, Student filed a Due Process Hearing Request¹ (complaint) naming Torrance Unified School District (District).

On August 6, 2014, District timely filed a Notice of Insufficiency 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.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 requirements prevent vague and confusing complaints, and promote fairness by providing the

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).

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

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. (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 Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disabilities Act, or the Unruh Civil Rights Act.

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).

DISCUSSION

Student's complaint alleges that District denied Student a FAPE in the 2013-2014 school year. Specifically, the complaint alleges that District failed to assess Student in all areas of suspected disability and failed to provide prior written notice of District's refusal to conduct the assessments Student's parent requested regarding Student's central auditory processing and recreational functioning. Student alleges District failed to provide an appropriate placement, specifically, a more restrictive environment. Student also alleges District failed to provide independent educational evaluations upon parental request for all areas District had assessed. Student alleges District failed to implement the March 13, 2014 behavior support plan that was contained in Student's March 20, 2014 IEP, with respect to the reactive strategies and progressive discipline matrix for disciplinary actions. Finally, Student alleges that District's actions and inactions violated Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disabilities Act, and the Unruh Civil Rights Act. Student's proposed resolutions include independent educational evaluations and placement in a non-public school operated by The Help Group. The complaint states Student's name and date of birth, Student's residence address and school of attendance.

A review of the complaint shows that Student provided ample "facts related to the problem" to provide District the requisite "awareness and understanding of the issues forming the basis of [Student's] complaint." Student alleges that he needed but District did not offer or provide appropriate assessments, an appropriate placement, and appropriate behavior services during the 2013-2014 school year.

In sum, Student's complaint identifies the issues, adequate related facts about the problem(s), and proposed resolutions to permit District to respond to the complaint and participate in a resolution session and mediation. Accordingly, the complaint is sufficient.

However, although sufficiently stated, Student's claims regarding Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disabilities Act, and the Unruh Civil Rights Act are outside the jurisdiction of OAH. Accordingly, those claims are dismissed.

ORDER

1. Issues Two, Three, Four, and Five of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue One of Student's complaint is insufficient under Title 20 United States Code section 1415(c)(2)(D) and is dismissed.

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

DATE: August 8, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings