

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GARVEY SCHOOL DISTRICT.

OAH Case No. 2018080021

ORDER DETERMINING COMPLAINT
PARTIALLY SUFFICIENT

On July 31, 2018, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings naming Garvey School District. On August 15, 2018, Garvey 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. (20 U.S.C. § 1415(b) & (c).) 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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

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).

it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 Fed. Reg. 46540-46541, 46699.)

DISCUSSION

Student alleges three claims in the complaint; all of which are sufficient to put Garvey on notice of the issues forming the basis of the complaint. However, to the extent Student is alleging violations beyond the two year statute of limitations, or prior to July 31, 2016, the complaint is insufficient. If Student intended to pierce the statute of limitations to allege violations prior to July 31, 2018, Student will need to file an amended complaint.

With regard to Issue One, Student alleges Garvey denied him a FAPE by failing to appropriately assess him for special education services from at least March 2016 to the present. Student alleges facts regarding additional areas of need that were not assessed, specifically social-emotional concerns and the need for intensive counseling services. However, Student does not allege any facts or law regarding the statute of limitations. Student alleges Parent expressed concerns about Student's anxiety around school and his challenges with academics during the 2015-2016 school year and that there was a student study team meeting held on June 1, 2016. However, Student does not allege that he is trying to pierce the statute of limitations. Student has failed to state sufficient facts to allege violations beyond July 31, 2016, and the claim for relief prior to July 31, 2016, is insufficient.

Similar to Issue One, Issue Two alleges Garvey denied Student FAPE by failing to design and implement an individualized education program uniquely tailored and reasonably calculated to confer meaningful educational benefit from March 2016 to the present. Student alleges his initial IEP team meeting was held on June 6, 2017, and alludes to needing more services and/or goals regarding anxiety and school avoidance during the 2017-2018 school year. Again, other than alleging that Parent expressed concern during the 2015-2016 school year, asked for support and assessments, and attended a student study team meeting on July 1, 2016, Student does not provide any argument to pierce the statute of limitations. Student has failed to state sufficient facts to allege violations beyond July 31, 2016, and the claim for relief prior to July 31, 2016, is insufficient.

Issue Three is sufficiently pleaded to put Garvey on notice as to the basis of Student's claim. Student alleges Garvey denied Parent meaningful participation during the IEP team

meetings and that amounted to a denial of FAPE. Although Student does not allege a specific time period, he alleges acts regarding an IEP team meeting held on June 6, 2018.

Student's proposed resolutions request a change of placement, assessments, and compensatory services. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined, with the exception of the request for assessments. It is clear from the complaint that the reference to a different school district is a typographical error. Although it is not completely clear if Student is requesting that Garvey conduct assessments or if he is requesting independent educational evaluations, he has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues One and Two of Student's complaint are insufficiently pleaded as to any claim prior to July 31, 2016, under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues One and Two of Student's complaint are sufficiently pleaded as to the claims beginning on July 31, 2016, under title 20 United States Code section 1415(c)(2)(D).
3. Issue Three of Student's complaint is sufficiently pleaded 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).²
4. An 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.

² The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One and Two as stated above and Issue Three as stated in Student's complaint.

DATE: August 20, 2018

DocuSigned by:

Linda Johnson

LINDA JOHNSON

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Administrative Law Judge

Office of Administrative Hearings