

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CABRILLO POINT ACADEMY.
OAH CASE NUMBER 2021110066

ORDER OF DETERMINATION OF PARTIAL INSUFFICIENCY
OF DUE PROCESS COMPLAINT

NOVEMBER 18, 2021

On November 2, 2021, Parents on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Cabrillo Point Academy. On November 17, 2021, Cabrillo Point Academy filed a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (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).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

A complaint is sufficient if it: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution 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 Individuals with Disabilities Education Act, IDEA and the relative informality of the due process hearings 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 FR 46,540-46541, 46699.)

OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act, referred to as IDEA. (*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 *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, the United States District Court for the Northern District of California held that when the Student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education, known as FAPE. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION

The complaint alleges Parents and Cabrillo Point Academy entered into a written settlement agreement on September 20, 2021, following mediation to resolve an earlier filed dispute between the parties pending before OAH, Case Number 2021060880. Although the complaint references the settlement agreement, a copy of the agreement is not attached to the complaint.

Student's complaint alleges five issues, some of which are sufficiently pled, and some of which are insufficiently pled. The issues are discussed below.

Issues One through Three allege Cabrillo Point Academy breached the terms of the settlement agreement. More specifically, Issue One alleges Cabrillo Point Academy failed to place Student in a mutually agreeable non-public placement following execution of the settlement agreement. Issue Two alleges Cabrillo Point Academy breached the settlement agreement by not providing Student's related IEP services following execution of the settlement agreement. Issue Three alleges Cabrillo Point Academy violated the settlement agreement by failing to provide Parents an assessment plan within five (5) days of execution of the settlement agreement.

The allegations are sufficient to put Cabrillo Point Academy on notice of the issues forming the basis of the complaint. The settlement agreement purportedly agreed to place Student at a non-public school and to provide Student his related IEP services until Student transitioned to a non-public school. The complaint alleges Cabrillo Point Academy failed to provide Student an appropriate mutually agreeable non-public school placement and stopped providing Student his related IEP services after execution of the settlement agreement, both of which purportedly denied Student a FAPE. Whether Student's complaint as to placement and services was limited to a claim for breach of contract or a denial of FAPE because of alleged non-compliance of the settlement agreement is not proper for a notice of insufficiency motion. A motion to determine whether a claim is within OAH's jurisdiction is appropriate for a motion to dismiss as an analysis of the settlement agreement is required and notice of insufficiency only analyzes the adequacy of the pleading. Finally, the claim is sufficiently pled to put Cabrillo Point Academy on notice of the problem relating to Student's educational placement, and the provision of a FAPE.

Issue Four alleges that Cabrillo Point Academy denied Student a FAPE by failing to permit Student's parent to record an IEP team meeting. Student fails to allege the date of the IEP team meeting when this allegedly occurred. Further, it is unclear from the complaint whether the IEP team meeting occurred before or after execution of the September 20, 2021 settlement agreement. Therefore, Issue Four is insufficiently pled for failure to state sufficient facts. Student may correct this insufficiency by alleging more detailed facts about the IEP team meeting at issue, including the date of the meeting and the participants.

Issue Five does not allege facts supporting a claim for relief under the IDEA, but instead requests as a proposed resolution that the September 20, 2021 settlement agreement be deemed "cancelled" or determined unenforceable. Issue Five is insufficiently pled to put Cabrillo Point Academy on notice of the facts pertaining to this issue.

A parent without 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. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues One, Two and Three of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues Four and Five of Student's are insufficiently pled 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) with respect to Issues Four and Five.

4. The amended complaint shall comply with the requirements of title 20 U.S.C. 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, this matter shall proceed as currently scheduled as to Issues One, Two and Three of Student' complaint.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings