

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EL DORADO UNION HIGH SCHOOL  
DISTRICT.

OAH CASE NO. 2012050375

ORDER DENYING MOTION TO  
DISMISS ISSUE 3(E) AND DENYING  
NOTICE OF INSUFFICIENCY AS TO  
ISSUE 3(E)

On May 7, 2012, Student filed a “Special Education Due Process Complaint Notice” (complaint) naming District as Respondent. On May 15, 2012, District filed a “Response to Due Process Complaint and Motion to Dismiss Issue.”

District’s motion seeks the dismissal of Student’s issue 3(e), or, in the alternative, a finding of insufficiency as to Issue 3(e). Issue 3(e) alleges that District procedurally denied Student a free appropriate public education by failing to comply with procedural requirements for expulsion. This motion will be deemed a limited notice of insufficiency and/or a motion to dismiss as to Issue 3(e), only. Student did not file a response. For the reasons discussed below, both the notice of insufficiency and the motion to dismiss are denied.

*Sufficiency of Issue 3(e)*

The respondent to a due process hearing request has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).)<sup>1</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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. (§ 1415(b)(7)(A)(ii)(III) & (IV).)

The determination of whether a complaint is sufficient is made by looking at the face of the complaint. (§ 1415(c)(2)(D).) In general, fundamental principles of due process

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<sup>1</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

entitle the respondent to know the nature of the allegations being made against it, such that respondent may prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

Here, Student alleges in the complaint that District failed to assess Student in the area of social/emotional challenges, failed to provide appropriate related services in the area of social/emotional, including an appropriate behavior support plan, that Student was suspended from school numerous times because of his behaviors, and that in November 2011 District notified Parents that Student was expelled. Student alleges in Issue 3(e) that District failed to follow the appropriate procedural formalities for expulsion, including timeliness and notification to Parents. Issue 3(e), when read in conjunction with all of the factual allegations in the complaint, is sufficiently pleaded to put District on notice of the issue in order to prepare for a resolution session, mediation and due process hearing. Therefore, the NOI is denied.

#### *Motion to Dismiss*

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9<sup>th</sup> Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) Although OAH has granted 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., OAH will not dismiss claims that have otherwise been properly pleaded.

Here, Student alleges in Issue 1(i) that District denied Student a free appropriate public education (FAPE) by improperly expelling him from school in November 2011. Issue 3(e) alleges that District denied Student a FAPE in the 2011-2012 school year by failing to comply with procedural requirements for expulsion. District argues, without citing to any authority, that Issue 3(e) falls outside of OAH jurisdiction because it pertains only to the procedural components of expulsion, and is redundant of Issue 1(i). District’s argument is not persuasive. Issue 3(e) and Issue 1(i) are integral and similar to each other. Whether or not Issue 3(e) has merit requires findings of fact by the hearing judge. Student is entitled to present evidence on this issue before it is determined whether it has merit. Therefore, the motion to dismiss Issue 3(e) is denied.

#### ORDER

1. Student’s issue 3(e) is deemed sufficient pursuant to section 1415(b)(7)(A)(ii).
2. District’s motion to dismiss Issue 3(e) is denied.

3. All previously set dates are confirmed.

Dated: May 21, 2012

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings