

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL
DISTRICT, LONG BEACH UNIFIED
SCHOOL DISTRICT, CHINO VALLEY
UNIFIED SCHOOL DISTRICT, GARVEY
ELEMENTARY SCHOOL DISTRICT.

OAH CASE NO. 2012080536

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 17, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming Alhambra Unified School District, Long Beach Unified School District, Chino Valley Unified School District (CVUSD), and Garvey Elementary School District as respondents.

On August 24, 2012, CVUSD filed a Notice of Insufficiency (NOI) 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

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).

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.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

DISCUSSION

The facts alleged in Student’s complaint are sufficient to put CVUSD on notice of the issues forming the basis of the complaint. Student alleges that she has resided within all respondent school districts including CVUSD within the last two years, has not been appropriately assessed or had her unique educational needs appropriately identified or addressed, and was thereby denied a free appropriate public education (FAPE). Specifically, Student alleges that she was moved, transferred and disenrolled without having been assessed in all areas of suspected disability including speech, language, academics and behavior, despite ample notice in Student’s educational records as to these areas of need. Further, although CVUSD is not specifically mentioned, the allegation is clear that it is against all named districts. Thus, Student’s complaint identifies the issues and adequate related facts about the problem to permit CVUSD to respond to the complaint and participate in a resolution session and mediation. Therefore, Student’s statement of the claims is sufficient.

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).

CVUSD's NOI argues that Student was last enrolled in CVUSD in March 2010, outside the two year statute of limitations. Although OAH will 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.....), special education law does not provide for a summary judgment procedure. Here, the NOI is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, because the complaint is sufficient to put the District on notice of the claims and requested relief, the NOI is denied. All dates currently set in this matter are confirmed.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

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

Dated: August 27, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings