

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012090074

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENYING
MOTION TO DISMISS

On September 04, 2012, San Dieguito Union High School District (District) filed a Request for Due Process Hearing¹ (complaint) naming Student.

On September 13, 2012, Student filed a Notice of Insufficiency (NOI) and Motion to Dismiss District'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

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 in matters involving proposal or refusal to initiate or change the identification, assessment or educational placement of a child; the provision of 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 agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) 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 does not have authority to hear and determine the equivalent of a judgment on the pleadings or motion for summary adjudication prior to giving a petitioner the opportunity to develop a factual record at hearing. In light of the liberal notice pleading standards

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).

applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

DISCUSSION

The problem alleged in the complaint by District is that in order to develop an appropriate program for Student, District requires additional information concerning Student's diagnosis and limitations so that District can develop a health plan which would provide for Student's safety and health within the school environment. District contends the assessment set forth in the June 1, 2012, plan would obtain this information. District seeks an order permitting it to proceed with the assessment plan without Parents' consent, and an order that Parents make Student reasonably available for the assessment.

District's complaint alleges facts relating to the problem. Student is 14 years old and lives within District's boundaries. Student was found eligible for special education and related services on February 23, 2012. Student's primary eligibility was other health impairment (OHI) due to anxiety and depression with secondary eligibilities of emotional disturbance and specific learning disability. Student's eligibility was based upon assessments conducted in December 2011 and January 2012. The assessments requested by District and agreed upon by Parents, included cognitive ability, visual motor functioning, academic functioning, social emotional functioning, health and speech and language. The results of these assessments are described. District offered to conduct an assessment for educationally related mental health services (ERMHS) during individualized education program (IEP) team meetings held on February 23, 2012, March 22, 2012, April 19, 2012, and offered Parents an assessment plan on June 1, 2012. The date and substance of each IEP team meeting, as well as Student's IEP and addendums are described. Parents consented to Student's IEP and addendum, but not to District's request for an ERMHS assessment. Student had 51 excused absences due to illness and 18 unexcused absences during the 2011-2012 school year.

The facts alleged in District's complaint are sufficient to put Student on notice of the issues forming the basis of the complaint. District's complaint identifies the issues and sets forth adequate related facts about the problem to permit Student to respond to the complaint, participate in mediation and prepare for hearing. The IDEA requires only a "description of the nature of the problem," facts related to the problem and proposed resolutions to the extent know and available at the time (20 U.S.C. (b)(7)(A)(ii)), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings. Therefore, District's complaint is sufficient.

Student also requests that the matter be dismissed because Student disputes whether District's requested assessment is necessary. This is a factual issue. Read together, Student's NOI and Motion to Dismiss is, essentially, a motion for summary adjudication, i.e., a request that prior to hearing, OAH resolve the facts in Student's favor. OAH does not summarily resolve factual issues of this nature without giving the parties an opportunity to put on evidence at hearing. Accordingly, Student's motion to dismiss is denied.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Student's motion to dismiss is denied.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: September 17, 2012

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings