

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT, SAN DIEGO UNIFIED
SCHOOL DISTRICT, AND MORENO
VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013100148

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND ORDER TO
DISMISS SAN DIEGO UNIFIED
SCHOOL DISTRICT AS A PARTY

On September 30, 2013 Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request¹ (complaint) naming the Val Verde Unified School District (VV), the San Diego Unified School District (SDUSD), and the Moreno Valley Unified School District (MV) as respondents.

On October 10, 2013, VV and MV filed a response to Student's complaint. In the response, VV admits that it provided educational services to Student from October 1, 2011 to September 30, 2013 when MV commenced providing educational services.

On October 11, 2013, SDUSD filed with OAH a Notice of Insufficiency (NOI) as to Student's complaint. SDUSD contends that the complaint fails to allege any facts relating to it and that Student was not a student of SDUSD during the two year period prior to filing the 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).

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).

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 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 complaint contains seven issues and no factual allegations to support these issues. Student has attached to the complaint a number of documents of which two are integral as to whether Student attended school at SDUSD during the relevant period.

The first relevant document is a September 6, 2013 letter from Pamela Bendozza, executive director of SELPA Services of MV to Parent. Ms. Bendozza refers Parent to the VV special education director to schedule an Individualized Education Program (IEP) team

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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).

meeting. The second document is a letter to Parent from Tracy Bunz, principal of the Val Verde Academy. The stationary contains a coat of arms for Val Verde Academy and the MV district supervisor and board of education members. Ms. Bunz informs Parent that the school is withdrawing consent for her to visit the campus because of aggressive behavior towards staff.

The complaint is not sufficient as there are no factual allegations demonstrating how SDUSD has any relationship to the issues alleged.

SDUSD requests that Student be denied an opportunity to amend the complaint citing that Student has not been a student in SDUSD since 2009. In support of its request, SDUSD attaches the declaration of Jennifer Parks-Orozco, currently a Site Administrator with the SDUSD Due Process Office and formerly a teacher at the Del Sol Academy where Student attended. Ms. Parks-Orozco declares that Student left SDUSD on December 18, 2009. Ms. Park-Orozco was personally familiar with Student and his Parent and attended the Del Sol going-away party for Student. Accompanying the declaration are documents demonstrating Student left SDUSD in 2009.

ORDER

1. Student's complaint is insufficiently pled, as to SDUSD, under section Title 20 United States Code 1415(c)(2)(D).
2. On the motion of the ALJ, Student's complaint as to SDUSD is dismissed as a party as SDUSD was not the local education agency responsible for providing education services to Student during the applicable limitations period.
3. The matter will proceed pursuant to the October 4, 2013 Scheduling Order.

IT IS SO ORDERED.

Dated: October 14, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings