

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT, and PLACER
COUNTY CHILDREN'S SYSTEM OF
CARE.

OAH CASE NO. 2011061341

ORDER CONVERTING NOTICE OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT TO A MOTION FOR
RECONSIDERATION, AND DENIAL
OF THAT MOTION

On June 29, 2011, Parents on Behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Roseville Joint Union High School District (District) and Placer County Children's System of Care (PCCSC), part of the Placer County Mental Health Department. On July 6, 2011, District filed a Notice of Insufficiency (NOI) to Student's complaint. PCCSC did not join in District's NOI.

On July 7, 2011, OAH issued an order finding that Student's complaint was sufficient, except as to one issue alleged against District. Student was given leave to amend the complaint to more sufficiently plead facts in support of that issue.

On July 13, 2011, PCCSS filed a NOI. No opposition was filed by Student. OAH will now rule on PCCSC's NOI.

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

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION

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).

OAH's order of July 7, 2011, was issued after the ALJ reviewed the entire complaint for its sufficiency. Accordingly, PCCSC's NOI is essentially a motion for reconsideration of the July 7, 2011 order, and will be treated as such. Motions for reconsideration require the moving party to show new facts or law that brings the appropriateness of the prior ruling into question. Here, PCCSC does not allege either new facts or law. Accordingly, its NOI/Motion for Reconsideration shall be denied.

Also, the gravamen of the relief requested in PCCSC's NOI is that it should be dismissed as a party to this matter because recent case law upheld the Executive Order suspending its obligation to provide mental health services to students being served pursuant to an Individualized Education Program (IEP). However, PCCSC's dismissal from this matter is not appropriately raised by its filing of an NOI. Rather, an order dismissing them from this matter must be made on a properly noticed Motion to Dismiss a Party. PCCSC is not precluded from filing such a motion.

ORDER

PCCSC's NOI is deemed a Motion for Reconsideration of OAH's order issued July 7, 2011, and as such is denied.

DATE: July 13, 2011

/s/

GARY A. GEREN
Administrative Law Judge
Office of Administrative Hearings
State of California