

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALM SPRINGS UNIFIED SCHOOL
DISTRICT AND THE RIVERSIDE
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2012070558

ORDER DETERMINING COMPLAINT
SUFFICIENT AS TO RIVERSIDE
COUNTY OFFICE OF EDUCATION;
ORDER DENYING RIVERSIDE
COUNTY OFFICE OF EDUCATION'S
MOTION TO DISMISS

On July 18, 2012, Parent, of behalf of Student (herein, Student), filed a Due Process Hearing Request¹ (complaint) naming the Palm Springs Unified School District (Palm Springs) and the Riverside County Office of Education (RCOE).

On August 1, 2012, RCOE timely filed a Notice of Insufficiency (NOI) as to Student's complaint and simultaneously filed a motion to dismiss.

Notice of Insufficiency

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

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).

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 Individuals with Disabilities Education Act 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

RCOE contends that Student’s complaint is insufficient because Student fails to state in his complaint enough facts indicating that RCOE is responsible for any of the remedies requested by Student.

Contrary to RCOE’s contentions, the complaint states sufficient facts to put RCOE on notice of the allegations against and thus enough facts to allow RCOE to participate in the resolution and mediation processes and to defend against the allegations at hearing. In pertinent part, Student states that he was expelled by Palm Springs sometime after February 29, 2012, and that he was re-directed to a continuation school. Student contends that at that time RCOE became his local education agency (LEA). Student alleges that RCOE failed to convene an individualized educational program (IEP) team meeting for him, failed to offer

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).

him an educational program, and failed to offer him transportation to the continuation school, for the remainder of the 2011-2012 school year and for the 2012-2013 school year. Student contends that these failures by RCOE denied him a FAPE. Student argues, in the alternative, that Palm Springs was his LEA during the time in question and should have offered him an educational program. However, the fact that Student makes an alternative argument that another LEA had responsibility to provide him with a legally adequate special education program, does not mean that Student's complaint is insufficient as to RCOE. Student makes specific allegations regarding RCOE. It will be Student's burden at hearing to prove the validity of those allegations.

Student's complaint is therefore sufficiently pled as to RCOE.

Motion to Dismiss

RCOE also moves to dismiss Student's complaint. RCOE contends that it was not Student's LEA. RCOE states that Palm Springs contacted RCOE about the possibility of Student attending one of RCOE's community schools. However, although RCOE was ready to set up an IEP team meeting for Student, none occurred. The first time RCOE attempted to initiate an IEP team meeting, Student's parent did not attend because she indicated that the family was moving to Ontario. Student's parent later contacted Palm Springs saying that the move was not going to take place. However, Palm Springs never arranged a subsequent IEP team meeting. RCOE therefore contends it is not a proper party to this action because an RCOE placement was never arranged for Student. RCOE offers the declaration of one of its administrators in support of its motion to dismiss.

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.) RCOE therefore is a proper party to a due process complaint.

The Office of Administrative Hearings (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.....). However, special education law does not provide for a summary judgment procedure.

RCOE's contention that it is not a proper party because it never had a responsibility to provide educational services to Student is a factual dispute because, contrary to RCOE's assertions, Student's complaint contends that RCOE was, in fact, responsible for Student's education. Resolving the issue requires weighing evidence to be presented by the parties. RCOE's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on disputed matters of fact. RCOE fails to cite to any authority that would require OAH to hear and determine the equivalent of a judgment on the

pleadings or a motion for summary judgment prior to giving Student, as petitioner, the opportunity to develop a factual record for hearing on issues properly within the contours of a due process complaint.

In its motion to dismiss, RCOE raises issues which are more properly affirmative defenses to Student's complaint. RCOE, as a county office of education, is a proper party to a due process complaint. Whether it had a responsibility to the student in *this* case is a question of fact to be determined based on evidence submitted at a due process hearing.

ORDER

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

Dated: August 2, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings