

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2012071004

v.

LAKESIDE UNION SCHOOL DISTRICT,

LAKESIDE UNION SCHOOL DISTRICT,

OAH CASE NO. 2012050216

v.

PARENTS ON BEHALF OF STUDENT.

ORDER GRANTING DISTRICT'S
REQUEST FOR CLARIFICATION AND
RECONSIDERATION AND ORDER
DETERMINING STUDENT'S
COMPLAINT SUFFICIENT

The Lakeside Union School District (District) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request in OAH Case Number 2012050216 on May 4, 2012, naming Parents on behalf of Student (Student) as respondent. The District seeks an order that the decision by the Individualized Education Program (IEP) team made on January 11, 2012, to exit Student from special education was appropriate. On July 30, 2012, Student filed her Due Process Hearing Request (complaint), naming the District as respondent. The complaint contains two issues. On July 30, 2012, Student filed a motion to consolidate the two cases which was granted by OAH on August 7, 2012.

On August 13, 2012, Student filed an amended complaint containing six issues without simultaneously filing a motion for leave to file an amended complaint. Since Student can not file an amended complaint without seeking either OAH permission or by stipulation with the respondent, Student's filing of the amended complaint was deemed to be a motion for leave to file the amended complaint.

On August 14, 2012, the District filed a Motion to Dismiss, or in the alternative, a Notice of Insufficiency regarding the amended complaint. Because the District was contending that the amended complaint was not sufficient, District's Notice of Insufficiency (NOI) was deemed an opposition to Student's request for leave to file the amended complaint. On August 17, 2012, the undersigned administrative law judge issued an order

denying Student leave to file its amended complaint and denying District's motion to dismiss as moot.

On August 20, 2012, the District filed a motion for clarification seeking to have OAH rule on its motion to dismiss and NOI which the District contends is applicable to Student's original complaint.

APPLICABLE LAW AND DISCUSSION AS TO MOTION FOR CLARIFICATION AND RECONSIDERATION

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.)

The District's motion to dismiss and NOI did not clearly delineate whether it was addressed to Student's initial complaint or to the proposed amended complaint. The motion and NOI appear directed to the original complaint although the District contended that the amended complaint fails to correct the insufficiency of the original complaint. The District in its motion and NOI requested a ruling as to the amended complaint.

In its motion for clarification and reconsideration, the District contends that its motion to dismiss and the NOI related not only to the amended complaint but also could be applied to the original complaint. Accordingly, the District's request for reconsideration is GRANTED and the motion to dismiss and the NOI will be considered as to Student's original complaint. An ALJ looks at the complaint in deciding whether the complaint is sufficient; a petitioner is not entitled under the applicable statutes to file an opposition. Therefore, the District's NOI will be considered below.

As to the motion to dismiss, Student has indicated that she will file an opposition to the District's motion no later than August 24, 2012. Thus, Student is directed to address the merits of the District's motion to dismiss and the District's motion to dismiss will be ruled on separately.

DISTRICT'S NOI

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ 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,

¹ 20 U.S.C. § 1415(b) & (c).

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.² 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.³

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ 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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

DISCUSSION

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and] mediation.

Therefore, Student’s complaint is sufficient.

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

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *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.].

⁶ 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).

ORDER

1. The District's motion for clarification and reconsideration is granted. District's motion to dismiss will be considered after Student has an opportunity to file an opposition, which may be filed no later than August 24, 2012.

2. As to the NOI regarding Student's original complaint, the complaint is deemed sufficient under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

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

IT IS SO ORDERED.

Dated: August 23, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings