

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013090300

ORDER:

- 1) DENYING STUDENT'S MOTION TO RESET TIMELINES;
- 2) DENYING STUDENT'S MOTION TO DISMISS AND FINDING DISTRICT'S COMPLAINT SUFFICIENT; AND
- 3) GRANTING JOINT REQUEST TO EXTEND TIME TO FILE PREHEARING CONFERENCE STATEMENTS

On September 11, 2013, Los Angeles Unified School District (District) filed a due process hearing request (complaint) naming Parent on Behalf of Student (Student) as the respondent. On September 12, 2013, the Office of Administrative Hearings (OAH) issued a Scheduling Order and Notice of Due Process Hearing and Mediation.

On September 25, 2013, Attorney Kyra Clipper filed a Notice of Representation on behalf of Student. Thereafter, on September 26, 2013, Student filed a Motion to Reset Timelines on the grounds Student was not properly served with District's complaint. District filed opposition on September 30, 2013. On October 1, 2013, Student filed a Reply to District's Opposition and District filed an Errata Re: Opposition to Respondent's Motion to Reset Timelines.

On September 30, 2013, Student filed a Motion to Dismiss or Notice of Insufficiency. On September 30, 2013, the parties also filed a Stipulation to Extend Filing Timeline for Prehearing Conference Documents.

Motion to Reset Timelines

Student contends he did not receive a copy of District's complaint until September 26, 2013, and therefore, all dates in this matter must be reset. The party initiating a request for due process hearing by filing a written request shall provide the other party to the hearing with a copy of the request at the same time the request is filed with the Superintendent (OAH). (Ed. Code, § 56502, subd. (c)(1).) Correspondence correctly addressed and

properly mailed is presumed to have been received in the ordinary course of mail. (Evid. Code, § 641.)

A proof of service filed with the complaint indicates a copy of the complaint was sent by U.S. mail on September 10, 2013, to the address on file for Parent. Proofs of service for the OAH Scheduling Orders issued September 12, 2013, in English and Spanish, were sent to the same address. Student does not contend the address on District's or OAH's proofs of service is incorrect, and he does not contend he failed to receive the Scheduling Orders sent by OAH to that address. In fact, the Student Information section of the motion contains the same address and the procedural and factual history set forth in the motion describes the issues between Student and District in detail. Accordingly, Student fails to demonstrate the complaint was not served and the motion is denied.

Motion to Dismiss/Notice of Insufficiency

District's complaint alleged Student was five years old and qualified for special education under the category of other health impairment at his initial individualized education program (IEP) on May 30, 2013. The complaint further alleged that, as part of the IEP, District conducted a psychoeducational assessment to incorporate findings made in an educationally related mental health services (ERMHS) assessment. The name of the school psychologist and details of her conclusions are described. The complaint further described a supplemental report prepared by a different examiner and details his conclusions. According to the complaint, Parent, through her attorney disagreed with the IEP and the assessments and requested an independent ERMHS assessment (IEE). District seeks an order finding the psychoeducational assessments appropriate and an order District is not required to provide an IEE at public expense.

Student contends the complaint should be dismissed because, although Parent requested an independent ERMHS assessment, Parent did not disagree with District's psychoeducational assessment. In the alternative, for the same reasons, Student contends District's complaint is insufficient because the facts are confusing.

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) 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 regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a 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 education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].)

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

Student requests that the matter be dismissed because Student claims it is only the ERHMS assessment and not psychoeducational assessment in dispute. However, District's complaint alleges the ERHMS was incorporated in the psychoeducational assessment and considered in the IEP team meeting finding Student eligible for special education. Student seeks, 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.

Assuming, without finding, Student's Notice of Insufficiency is timely, a review of District's complaint reveals that the complaint is sufficient. 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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.¹ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.²

The facts alleged in District's complaint are sufficient to put Student on notice of the issues forming the basis of the complaint. The complaint identifies the issues and adequate

¹ *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.].

² 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).

related facts about the problem to permit Student to respond to the complaint and participate in mediation. Therefore, District's complaint is sufficient.

Stipulation to Extend Time to File Prehearing Conference Statements

The Parties' stipulation to extend the time to file prehearing conference statements and related pleadings on the grounds they are engaged in settlement negotiations is accepted. Accordingly, all prehearing conference statements, witness and exhibit lists, and motions to be considered at the prehearing conference, shall be filed by 5:00 p.m. on October 3, 2013.

ORDER

1. Student's motion to reset timelines is denied.
2. Student's Motion to Dismiss is denied.
3. District's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
4. All prehearing conference statements, witness and exhibit lists, and motions to be considered at the prehearing conference, shall be filed by 5:00 p.m. on October 3, 2013.
5. All previously scheduled dates shall remain on calendar.

IT IS SO ORDERED.

Dated: October 01, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings