

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

JULIAN UNION SCHOOL DISTRICT.

OAH CASE NO. 2014040274

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT; DENYING MOTION TO
DISMISS; DENYING MOTION FOR
BIFURCATION WITHOUT
PREJUDICE

On April 02, 2014, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Julian Union School District (Julian).

On April 22, 2014, Julian filed a Notice of Insufficiency as to Student's complaint and a Motion to Dismiss; or, in the alternative, a Motion for Bifurcation of the due process hearing. Julian's Motion to Dismiss and/or Motion for Bifurcation is based upon its assertion that Student is not a resident of Julian. Student filed a response to Julian's Motion to Dismiss and/or Motion for Bifurcation on April 23, 2014.²

APPLICABLE LAW AND DISCUSSION

Notice of Insufficiency

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ 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 Student's response included a Motion for Extension of Time to respond to Julian's Motion to Dismiss. Student's request is moot based upon this Order Denying Julian's Motion to Dismiss.

³ 20 U.S.C. § 1415(b) & (c).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.⁴

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.⁵ 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.⁶

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁷ 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.⁸ Whether the complaint is sufficient is a matter within the sound discretion of the administrative law judge.⁹

Here, Student’s complaint was filed on April 2, 2014. Julian’s Notice of Insufficiency was dated, filed with OAH, and served on April 22, 2014, which is more than

⁴ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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

⁶ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁷ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁸ *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.].

⁹ 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).

15 days after it received Student's complaint. As a consequence, Julian's Notice of Insufficiency was not filed within the statutorily required timeline.

In addition, the facts alleged in Student's complaint are sufficient to put Julian 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 Julian to respond to the complaint and participate in a resolution session and mediation. Student sufficiently alleged that Julian denied him a free appropriate public education by denying her Father the opportunity to engage in meaningful participation in the development of Student's individualized education program on several grounds. Therefore, Student's statement of the claim is sufficient.

Motion to Dismiss

Although 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....), special education law does not provide for a summary judgment procedure. Here, Julian's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, and in particular residency. The issue of residency requires factual findings to be made by an administrative law judge at hearing and is not appropriate for a motion to dismiss. Accordingly, the motion is denied.

Motion to Bifurcate

Federal and state laws pertaining to special education due process administrative proceedings do not contain a specific reference to the procedure for bifurcating issues at trial. Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

Residency is a factual issue requiring evidentiary findings by the hearing judge. Whether or not the residency issue should be bifurcated and heard apart from the remainder of the cases for efficient and expeditious use of judicial resources lies within the discretion of the administrative law judge hearing the matter. Therefore, Julian's motion to bifurcate the hearing is denied as premature, and without prejudice to renewal of this motion before the hearing judge at the time of the prehearing conference. Accordingly, Julian's motion to bifurcate is denied, without prejudice to Julian.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Julian's Motion to Dismiss is denied.
3. Julian's Motion to Bifurcate the due process hearing is denied without prejudice.
4. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: April 24, 2014

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings