

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION, LOS ANGELES COUNTY
DEPARTMENT OF MENTAL HEALTH,
MONROVIA UNIFIED SCHOOL
DISTRICT, POMONA UNIFIED SCHOOL
DISTRICT AND COVINA-VALLEY
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010120475

ORDER OF DETERMINATION OF
SUFFICIENCY OF SECOND
AMENDED DUE PROCESS
COMPLAINT; ORDER DISMISSING
ISSUES TWO AND FOUR; ORDER
DENYING MOTION TO DISMISS
CVUSD AS A PARTY.

On December 13, 2010, Student filed a Due Process Hearing Request (complaint), naming the Los Angeles County Office of Education (LACOE), the Monrovia Unified School District (Monrovia), and the Los Angeles County Department of Mental Health (LACDMH). On February 3, 2011, Student filed a First Amended Complaint. On March 15, 2011, Student filed a motion for leave to file a Second Amended Complaint, adding Pomona Unified School District (PUSD) and the Covina-Valley Unified School District (CVUSD) as respondents. On March 22, 2011, OAH granted the motion, deemed the Second Amended Complaint filed as of the date of the Order, vacated all pending dates, and directed issuance of a new scheduling order. On March 23, 2011, OAH issued an order, setting mediation for April 26, 2011, and the due process hearing for May 4, 2011.

On March 24, 2011, CVUSD timely filed a Notice of Insufficiency (NOI) as to the Second Amended Complaint (complaint)¹, requesting its dismissal as a party and dismissal of Issues Two and Four.

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

¹The term “complaint” hereafter refers to the Second Amended Complaint.

² 20 U.S.C. § 1415(b) & (c).

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 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 sufficiency of the complaint is a matter within the sound discretion of the Administrative Law Judge.⁶

The purpose of the Individuals with Disabilities Education Act (IDEA)⁷ 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.⁸ 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

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 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).

⁷ (20 U.S.C. § 1400 et. seq.)

⁸ (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.)

availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters.⁹

OAH does not have jurisdiction to entertain claims based on other provisions of Federal and California law, such as the Due Process and Equal Protection Clauses of the Federal and California Constitutions, Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101, et seq.), and the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51 et seq.).

DISCUSSION

CVUSD contends that the complaint fails to assert sufficient information to enable it to prepare for mediation and due process hearing as to Issues One and Three. CVUSD further contends that Issues Two and Four are not within OAH jurisdiction. CVUSD moves that it and Issues Two and Four be dismissed from the complaint.

Issue One asserts that respondents failed to timely assess and identify Student's unique educational needs in all areas, specifically as to speech and language, academics and mental health, thus causing Student to be denied educational benefit because she was not offered appropriate and required services. Student alleges that CVUSD became Student's district of residence and, accordingly, a "thirty-day" IEP was held to document her placement in the Heritage Group Home on September 3, 2009. Student further alleges that CVUSD held an annual IEP on October 6, 2009. Student states that, despite previously identified speech and language needs, the October 6, 2009 IEP did not identify any areas of need and provided no goals or services for speech and language. The October 2009 annual IEP changed Student's placement to Quest, a non-public school.

The complaint states that a prior district of residence had, with consent of the proper guardian, referred Student for an AB 3632 assessment by LACDMH in January 2009. As of the September and October 2009 IEPs, the AB 3632 assessment had not been completed. Student alleges in Issue One that respondents, including CVUSD, did not assure the timely completion of the AB 3632 assessment, contributing to delay in Student's residential treatment center (RTC) placement.

The facts alleged in Student's complaint are sufficient to put the CVUSD on notice of the issues forming the basis of Issue One. Student alleges that CVUSD failed to properly assess Student, to provide speech and language services, to provide goals and service for speech and language, and to assure timely completion of the previous AB 3632 assessment referral. Student's complaint identifies the issues and adequate related facts about Issue One to permit CVUSD to respond to the complaint and participate in a resolution session,

⁹ *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.

mediation, and a due process hearing. Therefore, Student's statement of Issue One is sufficient.

Issue Three requests OAH to determine which of the respondents, including CVUSD, is the local educational agency (LEA) responsible for Student's special education as of the date Student entered the RTC. CVUSD contends that the complaint is devoid of any assertions which would support a finding that CVUSD is the LEA for Student's RTC.

Student's Issue Three is insufficiently pled in that it fails to provide CVUSD with the required notice or description of the problem and the facts relating to the problem. Other than stating that CVUSD was the Student's district of residence for a few months in late 2009, the complaint contains no allegations which would cause CVUSD to be the LEA for Student's RTC placement, after release from juvenile hall. The complaint states that Student's legal guardian resides in MUSD. The mere fact that a district used to be a student's district of residence is insufficient in itself to identify a district as the LEA for an RTC. Absence allegations demonstrating how or why CVUSD could be the LEA responsible for the RTC, Issue Three is insufficient.

Issues Two and Four seek relief based upon alleged violation of ADA, section 504, and the Unruh Act. Student acknowledges in the complaint that OAH does not have jurisdiction to hear such claims. Accordingly, Issues Two and Four are dismissed.

ORDER

1. Issue One of the complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue Three of the complaint is insufficiently pled as to CVUSD only under Title 20 United States Code section 1415(c)(2)(D).
3. The motion to dismiss Issues Two and Four is granted for lack of jurisdiction.
4. CVUSD's motion to dismiss it as a party is denied.
5. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II), as to Issue Three.¹⁰
6. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

7. If Student fails to file a timely amended complaint as to Issue Three, respondent CVUSD shall be deemed dismissed from Issue Three and the hearing shall proceed on Issue One against all respondents and Issue Three against respondents other than CVUSD.

Dated: March 28, 2011

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings