

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011090002

ORDER DENYING MOTION TO
DISMISS AND DETERMINING
SUFFICIENCY OF DUE PROCESS
HEARING REQUEST

On August 31, 2011, District filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH). On September 14, 2011, Student's father filed a motion to dismiss complaint on the grounds that 1) the complaint was not properly served on Student's parents, and 2) the complaint is vague and uncertain and alleges inaccurate facts.

Student's motion is interpreted as: 1) a motion to dismiss and 2) a timely notice of insufficiency. Each is addressed separately in this Order. District filed its opposition to the motion on September 16, 2011.

Neither the motion and nor the opposition were supported by declarations under penalty of perjury or authenticated evidence. However, District attached as an exhibit a partially illegible purported email confirmation of overnight delivery.

Motion to Dismiss

Service of a notice, motion or writing pertaining to special education due process hearing procedures shall be delivered personally or sent by first class mail or other means, including facsimile transmission, to OAH, or other persons or entities at their last known address, and, if the person or entity is a party with an attorney or other authorized representative of record in the proceeding, to the party's attorney or other authorized representative. Service must be made by a method that ensures receipt by all parties and OAH in a comparable and timely manner. (Cal. Code Regs., tit 5, § 3083.)

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, Student argues that District failed to comply with *inapplicable* provisions of the California Code of Civil Procedure in serving its due process complaint on Student's parents because the complaint was not personally served. While acknowledging that the complaint was received via United States Mail, Student contends that the copy sent by overnight mail was never received. Student argues that the "required Proof of Service" was not attached to the copy received via the United States Mail. However, Student acknowledges receipt of the complaint. (Motion, page 2, lines 7-8). District has complied with C.C.R. § 3083 and therefore Student's motion to dismiss on the grounds of improper service must be denied.

Notice of Insufficiency

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.¹ 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.²

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."³ 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.⁴ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁵

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

² See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

³ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁴ *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.].

⁵ 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).

As discussed above, OAH will only consider motions to dismiss on the ground of lack of jurisdiction, not on the merits.

Here, District's complaint alleges a single issue: whether District offered student a FAPE in the least restrictive environment in his June 7, 14, and 17, 2011 IEP. District's complaint includes a proposed resolution. District has alleged two pages of facts that describe the process leading up to District's offer at the June 2011 IEP team meetings. District's complaint is sufficiently pleaded to put Student's parents on notice of the issues alleged in the complaint in order to prepare for mediation and the hearing.

To the extent Student challenges the accuracy or completeness of the facts, that is not a ground to dismiss if the complaint provides sufficient notice. Instead, the accuracy or completeness of the alleged facts will be determined at the hearing, at which Student will have an opportunity to present evidence of what Student thinks the facts are. Therefore, Student's Notice of Insufficiency and/or Motion to Dismiss must be denied.

ORDER

1. Student's Motion to Dismiss is denied.
2. Student's Notice of Insufficiency is denied. The entire complaint is sufficient under title 20 United States Code section 1415(b)(7).
3. All dates are confirmed.

Dated: September 20, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings