

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MURRIETA VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011090600

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENYING
MOTION TO DISMISS

On September 19, 2011 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Murrieta Valley Unified School District (District).

On October 5, 2011, District filed a Notice of Insufficiency (NOI) as to Student's complaint, and in the alternative, a Motion to Dismiss.

Student did not file a response.

APPLICABLE LAW

Notice of Insufficiency

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 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

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 20 U.S.C. § 1415(b) & (c).

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

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 relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

Motion to Dismiss

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction to hear and resolve special education disputes under the IDEA. 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.” (FAPE) (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

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 *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.].

⁷ 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).

responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

In a due process complaint, the Petitioner is required to identify the proposed resolution “to the extent known and available to the party.” (34 C.F.R. § 300.508(b).) Under California law, ALJs are prohibited from granting remedies of placement in nonpublic, nonsectarian schools, or services by nonpublic nonsectarian agencies, where the schools or agencies are not certified pursuant to Section 56366.1 of the California Education Code. (Ed. Code, § 56505.2.)

ANALYSIS

District maintains that OAH is required to grant its NOI or, in the alternative, Motion to Dismiss, because Student requests a remedy that can not be provided by OAH. District does not attack Student’s allegations as vague. Student alleges that District offered a nonpublic school day program. Student alleges that he has a low incidence disability and that the specialized services he needs are not available in a day program, but requires a residential program. District understands that Student’s complaint arises from his disagreement with District’s proposed placement, but contends that OAH is barred from rendering a decision ordering District to fund Student’s only proposed resolution, placement in a Wisconsin residential facility. Student does not provide any information in his pleadings about the certification status of the Wisconsin residential facility. Instead, District proffers information from the web-site of the California Department of Education and from the Wisconsin Department of Public Instruction, including an e-mail from an administrator, to establish that Student’s proposed placement is not certified under California law, and outside the scope of OAH. District seeks to avoid the waste of resources attendant to a hearing where the ALJ will be barred from providing the only remedy requested by Student.

Based upon the factual averments in Student’s complaint, Respondents have the required notice of a description of the problem and the facts relating to the problem to defend Student’s claim for a waiver of the statute of limitations. For this reason, District’s NOI is denied.

District’s Motion to Dismiss is also denied. The determination of whether the proposed placement is within the jurisdiction of OAH can not be made from the face of Student’s pleadings. Additionally, the requirement of providing a proposed remedy known at the time of the filing of the complaint, does not limit the ALJ assigned to the hearing from determining whether a day program or a residential program is required, ordering placement in a certified residential program, or considering other placements identified by Student at the hearing. In sum, the determination as to whether Student’s remedy is legally valid and appropriate rests with the ALJ assigned to the hearing.

ORDER

1. District's Notice of Insufficiency is denied. Student's complaint is sufficiently pled under Title 20 United States Code section 1415(b)(7)(A).
2. District's Motion to Dismiss is denied.
3. All dates remain as calendared.

Dated: October 10, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings