

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FULLERTON JOINT UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2012080109

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On October 2, 2012, the Fullerton Joint Union High School District (District) filed a motion to dismiss Student's due process hearing request (complaint), contending that Student's handwritten complaint is illegible, and so District cannot determine the claims against it. Student filed an opposition on October 9, 2012.

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 a procedure for dismissal of a complaint for failure to state a claim under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400, et seq.). The only procedure to challenge the allegations of a complaint is through a notice of insufficiency (NOI). (See 20 U.S.C. § 1415(c)(2)(A).)

A complaint is deemed sufficient unless a party notifies OAH 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. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Here, Student's complaint was filed over two months ago, and District did not file an NOI. Accordingly, the IDEA requires OAH to treat Student's allegations of an IDEA violation as sufficient because District did not file a timely NOI.

The English language translation of Student's complaint obtained by the Office of Administrative Hearings (OAH) clearly pleads three claims against District over the past two years: (1) that District failed to provide Student with appropriate special education and services, (2) that District failed to identify Student's unique needs, and (3) that Student requires speech and counseling services. As remedies, Student seeks appropriate special education and related services and compensatory education and services. The above is sufficiently clear to provide District with an awareness and understanding of the issues to prepare for hearing.

District's motion also appears to be implausible based on District's own actions. District evidenced its understanding of the issues when it filed a prehearing conference statement on September 13, 2012 that identified issues, witnesses, and documentary evidence for hearing, without raising the issue of illegibility of the complaint.

District's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead, long after the NOI period expired seeks an adverse ruling on the sufficiency of Student's complaint. Accordingly, the motion to dismiss is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: October 16, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings