BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. COVINA-VALLEY UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013060074 ORDER DENYING NOTICE OF INSUFFICIENCY AND MOTION TO DISMISS

On May 31, 2013 Student filed a Due Process Hearing Request[1] (complaint) naming Covina Valley Unified School District (District.) On June 11, 2013, District timely filed a Notice of Insufficiency which it alternatively characterized as a Motion to Dismiss, the latter of which it also filed separately. For the reasons discussed below, the NOI and the motion to dismiss are denied.

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 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

[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).

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]

Parents have 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); see also Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. OAH does not grant the equivalent of a summary judgment motion and will only dismiss those matters that fall outside of its jurisdiction.

DISCUSSION

Student's complaint alleges that she is in the seventh grade in a general education classroom at a District school; that she has a medical condition that affects her vision, color perception and sensitivity to light; that she has had several individualized education programs (IEP); that she has received vision therapy from the District in the recent past pursuant to due process settlement agreements; that she struggles in math and writing skills; and that her needs in the area of math and writing were not adequately addressed by District, particularly at her May 6, 2013 IEP meeting. Her proposed resolutions include intensive academic instruction by a non-public agency, the Lindamood Bell reading program, and a one-to-one classroom aid.

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[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).

Based upon the above facts, Student's complaint states a single issue that "relates to identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." Specifically, Student's claim is that District denied her a FAPE during the statutory period by failing to appropriately address her unique needs in the academic areas of math and writing. If Student contends that she intended to raise additional FAPE issues, then she may seek leave to amend her complaint with sufficient facts to support additional issues.

The facts alleged in Student's complaint are sufficient to put the District on notice of the only issue forming the basis of the complaint as stated above. The complaint identifies the issue and adequate related facts about the problem, including proposed resolutions, to permit District to respond to the complaint and participate in a resolution session and mediation. The complaint is sufficient.

District has offered no factual or legal basis for granting a motion to dismiss, and therefore its motion is denied.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. District's motion to dismiss the complaint is denied.

3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: June 11, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings