BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013110472 ORDER DENYING DISTRICT'S MOTION "FOR AN ORDER REQUIRING DOCUMENTATION OF THE EDUCATIONAL RIGHTS HOLDER"

On November 13, 2013 Student filed a Due Process Hearing Request (complaint) naming Torrance Unified School District (District). On November 25, 2013, the Office of Administrative Hearings (OAH) issued an order denying District's Notice of Insufficiency. On December 23, 2013, District moved for an order "requiring documentation of the educational rights holder." OAH has received no response from Student. For the reasons discussed below, the motion is denied.

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. 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. Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a summary judgment procedure.

Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits at least five business days prior to the hearing. The law does not contain any provisions authorizing pre-hearing discovery.

A local educational agency (LEA) is required to convene a resolution meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation.

(20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(3) (2006).) There are no provisions of law that allow a parent or an LEA to unilaterally waive the resolution meeting. (71 Fed. Reg. 47602, No. 156 (Aug. 14, 2006.) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3) (2006).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. § 300.510(b)(4) (2006).)

District's motion argues that a paragraph identifying "Parent's Information," in a prior complaint filed by Student, identified a particular educational rights holder that was different from the educational rights holder identified in the "Parent's Information" paragraph in the current complaint.[1] District further argues that the current complaint is ambiguous, in that it continues to name the prior rights holder in the body of the complaint. District therefore seeks an order "requiring documentation of the educational rights holder."

The relief sought by District cannot be granted. The complaint has already been determined sufficient by a prior OAH order and unambiguously identifies an educational rights holder. District is not seeking dismissal based on facial lack on jurisdiction, nor on inability to obtain the participation of the identified parent in a resolution meeting after reasonable efforts have been made, nor any other form of relief recognized by law. Therefore District's motion is denied.

IS SO ORDERED.

Dated: January 10, 2014

/s/
JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

1 District's Motion incorrectly identifies the complaint in the current matter as an "amendment" to a prior complaint, and incorrectly states that the prior complaint was filed on October 11, 2013. However, it appears that District is actually referring to a complaint filed on October 14, 2013, in a prior OAH matter, OAH case number 2013100527, which was dismissed on December 2, 2013.