BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. MARTINEZ UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013090004 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; ORDER DENYING MOTION TO DISMISS

On August 28, 2013, Student filed a due process hearing request[1] (complaint) naming the Martinez Unified School District (District).

On September 10, 2013, the District filed a notice of insufficiency (NOI) as to Student's complaint. In the same document, the District also filed a motion to dismiss the complaint.

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]

DISCUSSION

The District raises three grounds for its NOI/motion to dismiss. First, the District argues that it is not the local education agency (LEA) responsible to provide Student with special education. Second, the District argues that some of Student's requested remedies are improper. Third, the District contends that the complaint does not state sufficient facts to inform the District about the nature of the case.

The District's second and third points are not well taken. The complaint alleges that the District is refusing to provide a FAPE to Student because the District claims it is not responsible for Student's education. Student's second issue alleges that the District previously did not provide a proper placement for Student. Those issues are sufficiently pled to put the District on notice regarding the claims.

Student's remaining "issues" are really requested remedies/resolutions. There is no need to dismiss those "issues" or require Student to amend, even if some of the requested remedies (such as reimbursement of advocate fees) could not be awarded at hearing. The remedies can be appropriately addressed by the administrative law judge (ALJ) during the prehearing conference or at hearing. Any remedy awarded in a special education case is a

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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).

matter within the discretion of the hearing officer. (See *School Committee of the Town of Burlington, Massachusetts v. Department of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996; 85 L.Ed.2d 385.) Student's complaint is sufficiently pled.

The District's issue regarding residency is more difficult. The District argues that Student's mother has moved out of the District. Even though Student (who is over 18 years old) still lives within the District, the District contends that, under Education Code section 56041, the responsible LEA is the one in which the parent resides, not the one in which the adult pupil resides.

The District is essentially bringing a motion for summary judgment. The District wants to argue that, even if everything Student alleges is true, Student cannot win as a matter of law.

There is no provision for summary judgment in special education law. Although the Office of Administrative Hearings (OAH) will grant motions to dismiss allegations that are facially outside of the jurisdiction of OAH, such as claims arising under the Americans with Disabilities Act, the District has not raised a jurisdictional defect. OAH has jurisdiction to determine residency disputes and to determine whether the District denied Student a FAPE. There is no legal reason to dismiss Student's case at this time.

ORDER

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

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

3. The motion to dismiss is denied.

Dated: September 10, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings