BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ESCONDIDO UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017050705 ORDER DENYING MOTION TO DISMISS AND DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 15, 2017, Escondido Union School District filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Student. On May 29, 2017, Student filed a Motion to Dismiss Issue One, and a Notice of Insufficiency as to District's complaint.

Motion to Dismiss Issue One

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 for a summary judgment procedure.

Issue One of the complaint is whether District's assessments are appropriate, such that Student is not entitled to independent educational evaluations at public expense. Student asserts that Parent never made a request for independent educational evaluations, but rather, included a request for independent educational evaluations in all suspected areas of disability in his proposed resolutions of a Request for Due Process Hearing filed with OAH, against District on March 28, 2017. Thus, Student contends nothing has triggered District's legal obligation to file for due process and that it only did so in retaliation to Student's complaint.

Student seeks a ruling on the merits of District's case prior to the issues being adjudicated at a due process hearing. Accordingly, Student's Motion to Dismiss Issue One is denied.

Determination of Sufficiency

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) 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 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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These 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. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

District's complaint is sufficient. District alleges two issues: (1) Whether District's assessments are appropriate, such that Student is not entitled to independent educational evaluations at its expense; and (2) Whether District may assess Student without Parent's consent pursuant to the April 4, 2017 assessment plan. The complaint alleges facts and proposed resolutions pertaining to the issues. Therefore, the complaint provides sufficient information to allow Student to respond to the complaint and prepare for mediation and/or a due process hearing.

Accordingly, District's complaint is sufficient.

ORDER

1. Student's Motion to Dismiss is denied.

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

3. All mediation, prehearing conference, and due process hearing dates in this matter shall remain as scheduled.

DATE: June 5, 2017

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Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings