BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. FULLERTON SCHOOL DISTRICT; NORTH ORANGE COUNTY SPECIAL EDUCATION LOCAL PLAN AREA.	OAH CASE NO. 2013040028 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 28, 2013, Student's parents on behalf of Student (Student) filed a due process hearing request[1] (complaint) naming the Fullerton School District (District) and the North Orange County Special Education Local Plan Area (SELPA).

On April 12, 2013, the District and SELPA jointly filed a notice of insufficiency (NOI) as to Student's 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

[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).

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.[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 and SELPA contend that Student's complaint is insufficient because it does not specify which of Student's individualized education program (IEP) documents or meetings are at issue. They argue that a prior settlement agreement between the parties may cut off part of Student's claim, but it is difficult for the District and SELPA to tell if anything is barred because of the vague wording of the complaint.

The District and SELPA also believe the complaint is insufficient because it does not specify which of the allegations relate to the SELPA and which to the District.

The facts alleged in Student's complaint are sufficient to put the District and SELPA on notice of the issues forming the basis of the complaint. Student's complaint alleges that the SELPA was listed on "all educational documents as an agency involved in the planning and implementation of [Student's] educational services...." In other words, Student alleges that the District and SELPA were jointly responsible for Student's education. The SELPA can dispute that allegation at hearing, but the allegation is sufficient to survive an NOI.

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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).

As for the settlement agreement, it is a matter outside the face of the pleading and is not properly challenged by an NOI. If a settlement agreement does indeed bar part or all of Student's case, that issue can be the subject of a motion to dismiss or raised as a defense at hearing.

The District and SELPA also raise other objections to Student's complaint which are more in the nature of factual defenses. For example, they argue that issue six (regarding an alleged lack of appropriate assessments) is unclear because repeated assessments have been conducted of Student. That is a defense to be raised at hearing, not a matter for an NOI. They also question the term "transition" IEP in issue three, but their confusion seems to be based on a factual dispute as to what type of IEP meeting was held, not the violation alleged by Student in that issue.

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.

Dated: April 15, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings