BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CHICO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015040880 ORDER (1) DETERMINING COMPLAINT TO BE SUFFICIENT AND (2) DENYING MOTION TO DISMISS

On April 16, 2015, Parents on behalf of Student filed a due process hearing request[1] (complaint) naming Chico Unified School District.

On April 23, 2015, District filed a notice of insufficiency (NOI) as to Student's complaint, or in the alternative, a motion to dismiss Student's allegations as without merit. On April 24, 2015, Student filed an opposition.

APPLICABLE LAW AND DISCUSSION

Notice of Insufficiency

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

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[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]

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. The complaint alleges that in March and April 2015, District conducted psychoeducational, behavior, speech and language, occupational therapy and health assessments without (i) providing Parents with an assessment plan, (ii) obtaining Parents' consent to the assessments, and (iii) in violation of the prohibition against assessing a student more than once per year without parental consent. Student's complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's statement of claims is sufficient.

Motion to Dismiss

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (for example, civil rights claims and section 504 claims), special education law does not provide for a summary judgment procedure.

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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).

Here, District's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, arguing that the type and timing of the assessments did not require parental consent. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

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

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

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

DATE: April 24, 2015

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings