BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. CARLSBAD UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017080140 (Primary)
CARLSBAD UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2017090499 ORDER FOLLOWING PREHEARING CONFERENCE; ORDER DETERMINING SUFFICIENCY OF COMPLAINT; ORDER GRANTING MOTION TO CONSOLIDTE AND CONTINUE PREHEARING CONFERENCE AND HEARING

On September 18, 2017, a telephonic prehearing conference was held before Administrative Law Judge Rommel Cruz, Office of Administrative Hearings. Patricia Lewis, Attorney at Law, appeared on behalf of Student. Justin Shinnefield, Attorney at Law, appeared on behalf of Carlsbad Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Motions:

District filed a Request for Due Process Hearing (complaint) on September 15, 2017, naming Student (District's Case, OAH Case number 2017090499). On September 15, 2017, after 5:00 p.m., District filed a motion to consolidate Student's Case (OAH case number 2017080140) with District's Case. District also sought to continue the consolidated matter to coincide with District's due process hearing date. On September 17, 2017, at 11:10 p.m., Student filed his Notice of Insufficiency as to District's complaint. Approximately, one half hour later, Student filed a Request to Stay District's Motion to Consolidate and Continue Until a Determination of Student's Notice of Insufficiency.

Sufficiency of District's Complaint

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[1] 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.[2] 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.[3]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

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[1] 20 U.S.C. § 1415(b) & (c).

[2] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[3] See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[4] Sen. Rep. No. 108-185, *supra*, at p. 34.

[5] *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.].

[6] Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities, 71 FR 46,540-46541, 46699 (Aug. 14, 2006).

DISCUSSION

Student contends that District's complaint seeks to defend the same IEP offer and assessments that are already being challenged by Student through his complaint, and litigation of those issues is not judicially economical and should not be litigated twice, even if consolidated.

District argues that its complaint sufficiently identifies the issues and pleads the necessary facts in support of its contentions. District seeks a finding that its March 3, 2017 individualized education program, amended on May 4, 2017, and June 8, 2017, offers Student a free appropriate public education in the least restrictive environment. District also seeks a finding that it's May 31, 2017 educationally related mental health assessment and March 3, 2017 psychoeducational multi-disciplinary assessment are appropriate and complied will legal requirements. District asserts that the assessments were conducted by qualified individuals who used a variety of reliable assessment measures.

District's complaint contains enough facts relating to these claims to provide Student with an awareness and understanding of Districts contentions. In construing the pleading requirements liberally, the complaint sufficiently identifies the issues and adequate related facts about the problem to permit Student to respond to the complaint and prepare for and fully participate in mediation and hearing.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in District's complaint are well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, District's Case and Student's Case involve common questions of law or fact, specifically; both cases involve the appropriateness of District's IEP offer and assessments. In addition, consolidation furthers the interests of judicial economy because both cases will involve the presentation at hearing of some of the same witness testimony and other evidence. Accordingly, consolidation is granted.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

District request to continue Student's case and to schedule the consolidated matter be heard on the date assigned to District's case, October 17, 2017. Student did not object to District's continuance request. There have been no prior continuances of Student's case. Good cause having been shown, the continuance request is granted.

ORDER

1. District's complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. District's motion to consolidate is granted. Student's case is designated the primary case. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in Student's Case, OAH case number 2017080140.

3. District's motion to continue Student's case is granted.

4. Mediation is scheduled for October 3, 2017, from 9:30 a.m. to 4:30 p.m., to take place at 6225 El Camino Real, Carlsbad, CA 92009.

5. The telephonic prehearing conference is scheduled for October 9, 2017, at 1:00 p.m.

6. The due process hearing shall take place on October 17, 2017, and continue day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall begin each day at 9:30 a.m. on the first day and 9:00 a.m. all other days, unless otherwise ordered.

DATE: September 18, 2017

DocuSigned by:
Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings