

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND PALISADES CHARTER
HIGH SCHOOL.

OAH CASE NO. 2013100144

ORDER DENYING MOTION TO
DISMISS

On October 2, 2013, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Los Angeles Unified School District (District) and Palisades Charter High School (Charter School). On October 25, 2013, the Charter School filed a Motion to Dismiss Issues 1, 2, 4 and 5, alleging that Student does not allege issues that OAH has jurisdiction to hear. On November 4, 2013, OAH received a response to the Motion to Dismiss from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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). The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

DISCUSSION

In the complaint, Student alleges that the District and Charter School failed to have qualified staff provide instruction and develop his education program and prevented parental involvement in his education. While Student's complaint presents some confusion as to the exact nature of the issues for hearing and requested relief, the Charter School's motion to dismiss is in fact a notice of insufficiency that contends that Student failed to allege sufficient facts or proposed resolutions to put the Charter School on notice. As such, the Charter School should have filed a notice of sufficiency within 15 days of receiving Student's complaint, October 17, 2013. As such, the complaint is deemed sufficient and any confusion regarding the issues for hearing and proposed resolutions can be addressed at the prehearing conference. Because the Charter School's motion to dismiss is in fact a veiled, untimely, notice of insufficiency, the motion to dismiss is denied.

ORDER

The Charter School's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: November 4, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings