BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matter of:<br><br>ALAMEDA UNIFIED SCHOOL DISTRICT,<br><br>v.<br><br>PARENT ON BEHALF OF STUDENT, | OAH Case No. 2017110120 |
| PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>ALAMEDA UNIFIED SCHOOL DISTRICT. | OAH Case No. 2017090835<br><br>ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT |

On September 19, 2017, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings. Student's complaint alleges that Student resides with Parents at a home on Lincoln Avenue in Alameda, California, and Student had attended District's Edison Elementary since 2015. Student alleges that in February 2017, Parents requested that District assess Student for special education, but District failed to evaluate Student. Student claims that in July 2017, Student provided District with Student's private evaluations and Parents requested an initial individualized education program. On September 1, 7, 12 and 14, 2017, Parents reported to District that Student resided at the home on Lincoln Avenue. Student also claims that on September 8, 2017, District provided Parents with an initial assessment plan, and on September 13, 2017, District requested proof of residency. Student contends that after providing the residency documentation to District on September 15, 2017, District notified Parents that Student had been "dropped" from Edison. Student alleges that District violated its child find obligations and failed to timely assess Student since October 2016 despite notice of Student's suspected disability and Parents' subsequent requests for assessments and an initial IEP. Student also contends that District failed to provide Parents with a written copy of parental rights and procedural safeguards prior to September 11, 2017, predetermined Student's placement and failed to provide prior written notice in response to Parents' requests for assessment.

On November 1, 2017, District filed a Due Process Hearing Request with OAH naming Student. District's complaint alleges that Student is a second grader attending Edison and that it filed its complaint so that the threshold issue of residency could be decided prior to adjudication of Student's substantive claims. District contends it received information that Student was not a resident of District for at least some of the period at issue

in Student's complaint. In August 2017, District personnel visited the Lincoln Avenue home for a residency check after being informed that the Lincoln Avenue house was unoccupied, and found Parent packing. Parent stated that the family had moved and was preparing the home for sale. Parents were informed they must provide District with verification of their new address within District to continue enrollment. A neighbor informed District that Student's family did not spend the night at the Lincoln Avenue home. On September 8, 2017, District provided Parents with an assessment plan. The same day, District notified Parents that District had determined that Parents were not residing in the home on Lincoln Avenue and requested proof of residency. In response, Parents' provided a copy of a property tax statement showing continued ownership of the Lincoln Avenue home and a copy of Mother's driver's license. On September 15, 2017, District notified Parents that Student would be "dropped" at the end of the day as a student of District. In response, Parents requested that Student be designated as homeless under the McKinney-Vento Homeless Assistance Act. District continued Student's enrollment in District. Parent continued to list the Lincoln Avenue address as the family's current address, but also claimed the family was living in an AirBNB, but provided no address for that location. On October 20, 2017, District observed a "For Sale" sign outside of the Lincoln Avenue home. On October 31, 2017, District notified Parents that Student did not qualify for protection under the McKinney-Vento Homeless Assistance Act because Student was not homeless, and notified Parents of their right to appeal District's decision. District alleges that it is in the process of completing its initial assessment of Student to determine special education eligibility at an initial IEP scheduled for November 9, 2017. District seeks an order from OAH as to whether Student was a District resident for purposes of determining whether it had an obligation to provide Student with a free appropriate public education.

On November 1, 2017, Student filed a Motion to Determine Sufficiency of District's Complaint and To Dismiss for Lack of Jurisdiction. Student also argues that District's complaint is insufficient because it does not allege that Student lives outside of District and that it is vague because it alleges that Student has not met the residency criteria during at least some of the time period at issue in Student's complaint. Student also argues that Student has a right to appeal District's denial of protection under the McKinney-Vento Homeless Assistance Act, that District has not established that appeals have been exhausted, and that OAH does not have jurisdiction to adjudicate disputes under the McKinney-Vento Act.

On November 3, 2017, OAH held a prehearing conference in Student's case. Based on the discussion with the parties, OAH consolidated Student's Case with District's Case, bifurcated the issue of residency and denied District's motion to continue Student's Case. District's case was designated as the primary case and all statutory timelines are controlled by District's case.

On November 7, 2017, District filed opposition to Student's Motion to Determine Sufficiency of District's Complaint and To Dismiss for Lack of Jurisdiction. District contends that its pleading is sufficient because it provides Student with enough information for an awareness and understanding of the issues. Student does not reside at the only address

the District has on file for Student and Parents have refused to provide a current residence address for Student. OAH has jurisdiction to hear due process claims that arise under the Individuals with Disabilities Education Act. The residency issue arises under the IDEA in that Student's residency is a disputed issue of fact and the issues in Student's Case cannot be adjudicated until the residency issue is first determined. District's complaint does not ask OAH to determine whether Student qualifies for benefits under the McKinney-Vento Act, but rather a determination of Student's residency.

*Sufficiency of the Complaint*

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 has alleged one issue: Whether Student has been a resident of District during the time period at issue in Student's Case for purposes of determining its obligation to provide Student a FAPE. The facts alleged in District's complaint are sufficient to put the Student on notice of the issue forming the basis of the complaint and a proposed resolution. District's complaint identifies the issue and adequate related facts about the problem to

permit Student to respond to the complaint and participate in mediation. District has alleged that for at least some part of the period of time at issue in Student's Case, it is informed that Student was not a resident of District which could affect its obligation to provide Student a FAPE as alleged in Student's Case. Although District has not alleged the particular portion of time it contends Student was not a District resident, the complaint provides enough information to provide an awareness and understanding of the issues forming the basis of District's complaint, i.e., District is disputing Student's residency regarding the claims made in Student's complaint. Therefore, District's statement of the claim is sufficient.

Student's Motion to Dismiss for lack of jurisdiction will be addressed by a separate order.

ORDER

1. District's 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.

DATE: November 7, 2017

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings