BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017080895
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
ARCADIA UNIFIED SCHOOL DISTRICT.	

On August 18, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Arcadia Unified School District. On September 1, 2017, Arcadia filed a notice of insufficiency as to Student's complaint.[2]

APPLICABLE LAW

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 the Office of Administrative Hearings 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).)

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

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

[2] Arcadia also filed a motion to dismiss the complaint, citing the same grounds as contained in the notice of insufficiency. Because the complaint is found to be insufficient, the motion to dismiss is moot and will not be ruled upon.

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.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

DISCUSSION

Student alleges in his complaint that his family moved from Arcadia into the boundaries of another school district in December 2016. However, Arcadia agreed, by way of an inter-district transfer, to keep Student enrolled until the end of the 2016-2017 school year. In May 2017, Student claims an IEP team meeting was convened by Arcadia, and according to Student, a representative of the district where he resides was not included as part of the IEP team. Student claims that the IEP provided him with placement in an Arcadia

school for the 2017-2018 school year, and Parents timely filed a request for inter-district transfer so that he could remain a Student in Arcadia. However, the day before the school year began, Arcadia verbally informed Parents that Student was not being accepted as an inter-district transfer pupil.

Arcadia's notice of insufficiency was timely filed. In its notice of insufficiency, Arcadia correctly asserts that Student is attempting to get OAH to intervene following a refusal to continue providing placement and services to Student who is not an Arcadia resident. The IDEA does not give OAH jurisdiction over a case where the named educational agency is not a provider of special education services and placement to a child. The IDEA gives OAH no authority to determine whether or not a school district should grant an inter-district transfer to a Student.

There is no dispute that Student does not reside within Arcadia's boundaries; and at the end of the 2016-2017 school year, Arcadia ceased to be a provider of educational services to him. Student's complaint is insufficient because it does not allege facts that make Arcadia the local education agency that is proposing or refusing to initiate or change the identification, assessment, or educational placement of a child. Student's complaint is insufficient because it does not allege facts that make Arcadia the local education agency responsible for providing Student with a FAPE to a child. Student complains because Arcadia has done something is has a legal right to do: refuse to grant Student an inter-district transfer for the 2017-2018 school year. Accordingly, Student complaint is insufficiently pled.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

3. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

[3] The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. All dates previously set in this matter are vacated.

DATE: September 6, 2017

DocuSigned by:

D1AE8D9E81A848C...

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings