BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GUARDIAN ON BEHALF OF STUDENT, v. RIVERSIDE COUNTY OFFICE OF EDUCATION; SUPERINTENDENT KENNETH YOUNG; RIVERSIDE UNIFIED SCHOOL DISTRICT; SUPERINTENDENT RICH MILLER; RIVERSIDE COUNTY MENTAL HEALTH; and DOES 1 through 20.	OAH CASE NO. 2013040771 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AS TO RIVERSIDE COUNTY MENTAL HEALTH

On April 16, 2013, Guardian on behalf of Student (collectively, Student) filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH) naming the Riverside County Office of Education (RCOE); Kenneth Young, Superintendent; the Riverside Unified School District (RUSD); Rich Miller, Superintendent; and Riverside County Mental Health (RCMH).

On May 1, 2013, RCOE and Superintendent Kenneth Young, and RUSD and Superintendent Rich Miller, timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

On May 2, 2013, Riverside County Mental Health filed a joinder to RCOE's and RUSD's NOI's. RCMH requested that OAH sustain the NOI's filed by RUSD and RCOE and grant the requested relief.

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).

[1] 20 U.S.C. § 1415(b) & (c).

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.[2]

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 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]

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[2] 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[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).

DISCUSSION

Student's complaint was filed on April 16, 2013. In its motion of joinder, RCMH fails to indicate when it received Student's complaint. If it received the complaint on April 16, 2013, the date the date Student filed his complaint with OAH, then RCMH's May 2, 2013 notice of joinder is untimely because May 2, 2013 is 16 days after April 16, 2013, and therefore does not meet the statutorily required timeline. Student's complaint is therefore sufficient as to RCMH.

However, even if RCMH timely filed its notice of joinder, its notice is insufficient to address the allegations in Student's complaint as to it. The joinder filed by RCMH states that it is joining in the NOI's filed by RUSD and RCOE. The notice of joinder requests that OAH sustain those two NOI's. OAH has sustained the NOI in full as to RUSD and sustained it partially as to RCOE. The fatal flaw in the notice of joinder filed by RCMH is that neither RCOE nor RUSD discuss Student's allegations against Riverside County Mental Health in their NOI's. Neither of the pleadings discusses the procedural allegations against RCMH nor discusses the substantive allegations against RCMH. Nor does either of the pleadings discuss how RCMH was in privity with RCOE or RUSD. There is nothing in the pleadings filed by RCOE or RUSD that links RCMH to those pleadings. RCMH's notice of joinder does not address nor can it address whether Student's complaint is sufficient as to RCMH. Therefore, RCMH has failed to demonstrate that Student's complaint is insufficient as to it. Student's complaint therefore shall proceed as filed against RCMH.

ORDER

1. The complaint is deemed sufficient as to Riverside County Mental Health under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

2. The complaint is also sufficient as to Riverside County Mental Health under Title 20 United States Code section 1415(b)(7)(A)(ii).

3. Unless Student files an amended complaint pursuant to OAH's Orders finding his complaint insufficient in full as to RUSD, Superintendent Miller, and Superintendent Young, and partially sufficient as to RCOE, all mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: May 6, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings