BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013080295
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; ORDER DENYING MOTION TO DISMISS
ROSEVILLE CITY ELEMENTARY SCHOOL DISTRICT, ET AL.	

On August 5, 2013, Student's parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) naming the Roseville City Elementary School (District), among others.

On August 21, 2013, the District filed a Notice of Insufficiency (NOI) as to Student's complaint. At the same time, the District filed a motion to dismiss the complaint. On August 22, 2013, Student filed an opposition.

APPLICABLE LAW

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

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[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

[2] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1). It is unclear from the file whether the District's NOI was timely filed within 15 days of the District's receipt of the complaint. However, it is not necessary to decide that question, because, as discussed below, the complaint is sufficient either way.

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.[4] 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.[5]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] 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.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

DISCUSSION

Based on the language in Student's complaint, the only issue which addresses this particular respondent is Issue One. That issue alleges that the District incorrectly described the transportation services that Student received in Student's individualized education program (IEP). The first issue is clearly stated and the proposed remedy is also clear. It is sufficiently pled.

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[4] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

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

[7] *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.].

[8] 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).

The other issues in the complaint state claims against the other respondents. By their very language, those issues do not attempt to state claims against this District. Based solely on the unambiguous language of the issues, there is no need for an NOI by this District as to the other issues.

Student's opposition to the District's NOI complicates things. Although the opposition is somewhat confusing, Student appears to be arguing that some of those issues were intended to state claims against this District. Student's opposition raises new facts and legal arguments that were not alleged in the complaint.[9]

Student's opposition is not persuasive. Those other issues in the complaint, as currently pled, do not contain language involving this District. If Student intended to bring claims against this District in those other issues, Student will have to seek leave to file an amended complaint to add factual allegations regarding this District to those issues.

Likewise, there is no reason to dismiss those other issues as part of the District's motion to dismiss – by their very terms, those issues do not apply to this respondent. If Student intends those issues to include this District, Student will have to seek leave to amend the complaint.

The more difficult question involves the District's motion to dismiss Issue One. As stated above, this issue involved the way the transportation services were described in Student's IEP(s). Student's proposed remedy is to have OAH issue an order requiring the District to correct the IEP(s) to properly describe the transportation services.

The District argues that it actually provided the transportation services in the way Student sought, no matter how they were described in the IEP(s). The District also argues that Student has moved into the jurisdiction of the high school district now and is no longer within this District, so Student's proposed remedy has become moot.

Essentially, the District is bringing a motion for summary judgment. The District is arguing that, even if everything stated in Student's complaint is true, Student will lose as a matter of law.

There is no provision for summary judgment in a special education due process case under California law. OAH will entertain motions to dismiss issues that are beyond the jurisdiction of OAH to decide (such as questions under Section 504 of the Rehabilitation Act) or issues that are barred by the statute of limitations, but not motions to dismiss that are, in reality, motions for summary judgment. Instead, the law contemplates a swift hearing to decide disputed issues. The District's arguments do not present a reason to dismiss this case.

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9 Ironically, if Student's opposition was correct, then the issues would not be sufficiently pled and the District would prevail in its motion.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. The motion to dismiss is denied.

3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: August 22, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings