

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010050349

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DENYING
MOTION TO DIMISS

On May 10, 2010 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Irvine Unified School District (District).²

On May 20, 2010, District filed a Motion to Dismiss in Part, based upon statute of limitations, and a Notice of Sufficiency (NOI) as to Student's complaint. Student filed an opposition to the Motion on May 24, 2010.

APPLICABLE LAW

Sufficiency of Complaint

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of 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 (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

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 District has filed a Request for Due Process Hearing identified as OAH case number 2010031068. Student's Complaint requests consolidation with District's case. Student's request will be addressed separately.

³ 20 U.S.C. § 1415(b) & (c).

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.

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 ALJ.⁸

Statute of Limitations

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency’s withholding of information from the parent that was required to be provided to the parent.

DISCUSSION

Sufficiency of Complaint

Student’s Complaint raises the following issues:

1. Did District deny Student FAPE for school year 2007-2008 (9th grade) by:
 - 1.1 pre-determining its offer of FAPE;
 - 1.2 identifying placement in a functional developmentally delayed (DD) program; and
 - 1.3 failing to offer Student an appropriate placement in the least restrictive environment (LRE)?

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).

2. Did District deny Student FAPE for school year 2008-2009 (10th grade) by:
 - 2.1 failing to provide Student with aides and related services;
 - 2.2 failing to develop appropriate goals to enable Student to achieve academic growth; and
 - 2.3 failing to appropriately assess Student in all areas of suspected need?

3. Did District deny Student FAPE for school year 2009-2010 (11th grade) by:
 - 3.1 pre-determining District's offer of FAPE;
 - 3.2 failing to offer Student an appropriate placement in the LRE
 - 3.3 failing to develop appropriate goals to enable Student to achieve academic growth;
 - 3.4 failing to implement Student's 2009-2010 IEP by placing Student in two regular education classes for 11th grade;
 - 3.5 failing to allow parents meaningful participation in the IEP meeting;
 - 3.6 refusing placement at Student's home school;
 - 3.7 failing to provide physical therapy services from October 2009 to January 2010, in accordance with Student's IEP dated 1/22/09;
 - 3.8 convening an IEP team meeting on April 21, 2010, without parent attendance?

Each of Student's issues is followed by a brief statement of facts supporting those issues, and proposed resolutions. District acknowledges that the complaint provides some factual allegations in support of Student's issues. However, District argues that Student has not provided detailed facts regarding eight of eleven of the subparts to Student's issues. IDEA does not require Student to provide a detailed statement of facts. Student's complaint identifies the issues and adequate related facts about the stated problems to permit District to respond to the complaint and participate in a resolution session and mediation. District's NOI is denied.

Statute of Limitations

District claims that Student's complaint includes factual allegations prior to May 10, 2008, which are time barred. District seeks dismissal of Issue Number 1, and those parts of Issue Number 2 that rely on facts outside of the applicable statutory period. Student alleges in Issue Number 1 that Student's claim encompasses the entire 9th grade, which occurred in school year of 2007-2008. A portion of the 2007-2008 school year falls within the applicable statutory period, which began on May 10, 2008, and therefore Student's claim as stated in Issue Number 1 is not time-barred in its entirety. Student's Issue Number 2 alleges claims that fall within the applicable statutory period.

Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc., OAH will not dismiss claims that have otherwise been

properly pleaded. The District fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings prior to giving a petitioner the opportunity to develop a factual record at hearing. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

Here, where OAH has found that Student's complaint was sufficiently pleaded to put the District on notice of the issues for hearing, Student is entitled to an opportunity to develop a factual record at hearing as to whether Issue One is barred by the statute of limitations. At hearing, both parties have the opportunity to make a record and argue as to whether Issue One is barred by the statute of limitations. The District's Motion to Dismiss Issue One and portions of Issue Number Two is denied.

ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii).
2. District's Motion to Dismiss Issue Number 1 and portions of Issue Number 2 is denied.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: May 25, 2010

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings