

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012070569

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

On July 18, 2012, Student's parents on behalf of Student (Student) filed a due process hearing request¹ (complaint) naming Pleasanton Unified School District (District).

On August 1, 2012, the District filed a notice of insufficiency (NOI) as to Student's complaint.

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).

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

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(b)(7)(A)(ii)(III) & (IV).

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

DISCUSSION

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint and participate in a resolution session and mediation.

The District’s main objection to the complaint is that Student’s first issue alleges that the District failed to have an appropriate individualized health plan (IHP) in place for Student from the 2009-2010 school year through 2011. The District maintains that anything which occurred before July 18, 2010, is beyond the two-year statute of limitations. (Ed. Code, § 56505, subd. (1).)

However, Student alleges facts sufficient to show a possible exception to the statute of limitations. The statute of limitations does not bar a due process filing if a parent was prevented from requesting a hearing due to “specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request.” (Ed. Code, § 56505, subd. (1)(2).)

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).

Student's complaint alleges that District employees represented to Student's parents that the District had adopted the IHP proposed by Student's parents at an IEP meeting held in March 2010 (thereby solving the problem related to the IHP). Student alleges that it was not until an IEP meeting in May 2012 that Student's parents learned the representations were false and that the District had not adopted Student's parents' proposed IHP as part of Student's IEP.

Those allegations are sufficient to raise the possibility of an exception to the statute of limitations, at least for purposes of an NOI and motion to dismiss.⁸

ORDER

1. The 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.
3. The motion to dismiss is denied.

Dated: August 1, 2012

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

⁸ Nothing in this Order is intended to find that an exception to the statute of limitations does, in fact, apply in this case. It will be up to the administrative law judge hearing the case to decide whether the facts proven at hearing are sufficient to overcome the bar of the statute of limitations. This Order simply finds that, under the liberal pleading rules, Student's complaint is sufficiently pled and is not subject to dismissal based on a motion.