

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MATTOLE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010070014

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 29, 2010, Student filed a Due Process Hearing Request¹ (complaint) naming District as the respondent. On July 14, 2010, District filed a Notice of Insufficiency (NOI) as to Student's complaint. On June 15, 2010, Student filed a "Motion to Strike" District's NOI, arguing that District's contentions in the NOI were improper.

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 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 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

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)

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.

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 ALJ.⁷

DISCUSSION

The complaint states two issues. The first alleges that District administered assessments in January 2008 incorrectly and, as a result, misrepresented Student's abilities, thereby denying her a FAPE. The second alleges denials of FAPE in the 2008-2009 and 2009-2010 school years, and is broken down into subcategories for (a) failing to implement the January 31, 2008, IEP; (b) failing to implement the January 28, 2009, IEP; (c) failing to implement the January 21, 2010, IEP; (d) failing to accurately report progress on goals; (e) failing to develop goals; (f) failing to provide appropriate placement and services; and (g) failing to provide an educational placement "free of harassment."

District's NOI challenges the first issue as being outside the statute of limitations, and argues that the facts surrounding Student's allegations of misrepresentation do not fall within the misrepresentation exception to the statute of limitations provided for by Education Code section 56505, subdivision (l)(1). Special education law does not provide for a summary judgment procedure, and an NOI is not to be used to resolve factual issues. Here, the NOI seeks to resolve factual issues so as to reach the merits of its statute of limitations defense. Accordingly, the NOI on the first issue is denied.

District's NOI challenges subcategories (a) through (c) in the second issue as being vague. Student's complaint identifies the issues and adequate related facts to permit District to respond to the complaint and participate in a resolution session and mediation. Accordingly, the NOI on the second issue, subcategories (a) through (c) is denied.

District's NOI challenges subcategory (g) in the second issue by arguing the facts surrounding Student's allegations of harassment. As was discussed above, special education law does not provide for a summary judgment procedure. Here, the NOI seeks to resolve factual issues on the merits of the case. Accordingly, the NOI on subcategory (g) in the second issue is denied.

Student's Motion to Strike the NOI is considered as an opposition to the NOI, and is otherwise denied.

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).

ORDER

1. The complaint is sufficient under section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: July 15, 2010

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings