

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEVADA CITY ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2010110442

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT AND
ORDER DENYING DISTRICT'S
MOTION TO DISMISS/STRIKE

On November 8, 2010 Student filed a Due Process Hearing Request¹ (complaint) naming Nevada City Elementary School District (District) as the respondent. District timely filed a Notice of Insufficiency (NOI) on November 18, 2010. District's NOI also included a Motion to Dismiss/Strike the complaint on the ground that the issues, either partially, or entirely, were barred by the two year statute of limitations. On November 22, 2010, Student filed an opposition to both the NOI and the motion in which Student denied alleging issues outside the limitations period. As discussed below, the complaint is sufficient and District's motion to dismiss lacks merit.

NOI

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

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).

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

Here, on its face, the complaint appears to be alleging claims beginning two years prior to the date of filing. Student clearly has identified the fall of 2008 as the starting point for the issues, and there is nothing in the complaint that suggests Student is arguing for an exception to the statute of limitations that would apply to the time period prior to November 8, 2008. To the extent the factual allegations refer to prior school years, those facts in context appear to be intended as required “related facts” relating to problems within the statute of limitations.

Student has alleged three issues. Issue One alleges factual and procedural denials of FAPE for the 2008-2009 and 2009-2010 school year on various grounds. Issue Two similarly alleges substantive and procedural denials of FAPE for the 2010-2011 school year based on the IEP developed for Student on May 20, 2010. Issue Three alleges failure to conduct adequate assessments in five specific areas for the 2009-2010 school year. For each of the alleged procedural or substantive denials, the complaint alleges related facts explaining exactly what service, procedure or assessment Student believes were inappropriate or should have been provided. The

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).

complaint sets forth proposed resolutions, which on their face meet the requirement of being “know and available” at the time of filing. The complaint is sufficient.

Motion to Dismiss/Strike

District contends that all issues must be dismissed and/or that portions of issues must be dismissed because the factual allegations include allegations outside the statute of limitations. Student opposes the motion.

Although OAH will grant 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....), special education law does not provide for a summary judgment procedure.

IDEA due process hearing are subject to a two year statute of limitations that begins to run when a party knows or has reason to know of the facts underlying the basis for the request. (Ed. Code, § 56505, subd. (1).) This rule does not apply if the parent was prevented from requesting a due process hearing: 1) because of specific misrepresentations by the local education agency that it had solved the problem forming the basis for the request, or 2) the local education agency withheld information from the parent that was required to be provided. (Ed. Code, § 56505, subd. (1)(1) & (2).)

Here, as discussed above, the complaint on its face is sufficiently alleging substantive and procedural issues within the statute of limitations. Moreover, Student expressly states in her opposition that she is not alleging issues outside the statute of limitations period. Thus, there is no basis to dismiss or strike portions of the complaint at this time. Even assuming Student’s complaint included issues outside the limitations period, resolution of whether the statute of limitations applies generally cannot be resolved by a prehearing motion. This result occurs because both exceptions to the statute of limitations require factual determinations that require taking evidence and making credibility determinations.

In sum, District’s motion to dismiss/strike lacks merit because the complaint on its face is not alleging claims outside the statute of limitations. Even if the complaint made such allegations, District’s motion would be denied because the applicability of the statute of limitations is a factual issue not amenable to resolution by prehearing motion.

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. District's motion to dismiss/strike is denied without prejudice to District arguing at hearing, if necessary, that Student's issues are limited to the time period within two years of the date the complaint was filed

Dated: November 22, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings