BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. RED BLUFF UNION ELEMENTARY SCHOOL DISTRICT, RED BLUFF UNION HIGH SCHOOL DISTRICT, ANTELOPE ELEMENTARY SCHOOL DISTRICT, TEHAMA COUNTY DEPARTMENT OF EDUCATION AND TEHAMA COUNTY MENTAL HEALTH.	OAH CASE NO. 2011031548 ORDER DENYING ANTELOPE ELEMENTARY SCHOOL DISTRICT'S NOTICE OF INSUFFICIENCY OF DUE PROCESS COMPLAINT AND DENYING MOTION TO DISMISS

On March 29, 2011 Student filed a Due Process Complaint Notice[1] (complaint) naming, among others, Antelope Elementary School District (Antelope) as a Respondent.

On April 7, 2011, Antelope timely filed as one document a Response to Due Process Compliant, Notice of Insufficiency (NOI), and Motion for Dismissal. This Order only considers the claims in the complaint as alleged against Antelope and does not address the sufficiency of the complaint as to other respondents. For the reasons discussed below, Antelope's NOI and its motion to dismiss are both denied.

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

[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).

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 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]

NOI

Student's complaint, consisting of 85 paragraphs of factual allegations, names five respondents: Red Bluff Elementary School District, Red Bluff Union High School District, Antelope Elementary School District, Tehama County Department of Education, and Tehama County Mental Health. Student identifies his only issue as "Issue No. 1 - Denial of FAPE for the 2003-2004 School Year through Present." As to Antelope, Student alleges that Antelope denied Student a free appropriate public education (FAPE) during the 2003-2004 school year and through the "2008-2009 school years" by failing in its child find obligations, specifically by failing to assess him for special education services and by failing to provide him with special education services and supports. Student makes similar allegations, in different time frames, for the other respondents. Student further alleges that, because the respondents did not provide parents with notice of their parental rights and procedural

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[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.

[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).

safeguards, Student is making claims "beyond the statute of limitations." Student also lists seven proposed resolutions.

Student's factual allegations through Fact Paragraph 34 consist of a chronological history between 2003 and February 26, 2009, which include allegations that Student attended Antelope schools during that time frame. Student also alleges that he was not found eligible for special education services during that time frame. Fact Paragraph 35 alleges that on May 15, 2009, Student was removed from [an Antelope] school by the Sheriff's department because of behavior. Fact Paragraph 36 alleges that Antelope placed Student on home study with which Student was not compliant. The complaint alleges at Paragraph 38 that in July 2009, Student was placed at one of the other respondents' schools. Subsequent allegations relate to other respondents.

Antelope contends that Student's complaint does not state sufficient facts within the applicable statutory time frame to give Antelope adequate notice of the claims against it. However, Student has alleged that he attended Antelope as early as September, 2005, and that he attended Antelope schools thereafter, at least until July 2009. He also alleged that Antelope failed to find him eligible for special education "through the school year 2008-2009", and he has alleged a chronology of facts leading up to paragraphs 38, where another District allegedly became responsible for his education. Student has identified the issues and adequate related facts to put Antelope on notice of the issues forming the basis of the complaint and to respond to the complaint and participate in a resolution session and mediation. Student's complaint is sufficient as to Antelope.

Motion to Dismiss

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) 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. Antelope fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication of an issue 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, Antelope's motion to dismiss is based on the statute of limitations. However, Student's complaint has pleaded an exception to the statute of limitations that will require factual findings. Accordingly, because the statute of limitation issues can only be decided

after giving Student an opportunity to make a factual record, Antelope's defense is not appropriately decided by an NOI or motion to dismiss. Therefore it must be denied.

ORDER

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

2. Antelope's motion to dismiss is denied.

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

Dated: April 11, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings