

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011081166

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

On August 30, 2011 Student filed a Request for Due Process Hearing¹ (complaint) naming District as the respondent. On September 8, 2011 District timely filed a Notice of Insufficiency (NOI) and a motion to dismiss. Student filed an opposition to District's motion to dismiss on September 13, 2011.

Notice of Insufficiency

District contends all claims are insufficient.²

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 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

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 In its Conclusion, District seeks a finding that issues one through nine are each insufficient. However, District only discusses issues four, six, seven, eight and nine in "Part IV – Insufficiency."

³ 20 U.S.C. § 1415(b) & (c).

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

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 Administrative Law Judge.⁸

Issue one alleges that district denied Student a FAPE by failing to timely and appropriately assess Student in all areas of disability from August 30, 2009 to the time of filing of the complaint. When read in conjunction with the general factual allegations in the complaint, issue one is sufficiently pled to put District on notice of the issues and meaningfully prepare for a resolution session and due process hearing. Whether this claim falls outside of the statute of limitations, as discussed more fully below, is not appropriately decided in an NOI.

Issue two alleges that District denied Student a FAPE by failing to conduct an appropriate psychoeducational assessment. Issue two is sufficiently pled to put District on notice of the issues and meaningfully prepare for a resolution session and due process hearing. Whether this claim falls outside of the statute of limitations, as discussed more fully below, is not appropriately decided in an NOI.

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.

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).

Issue three alleges that District denied Student a FAPE from August 30, 2009 to the date of the complaint was filed by failing to consider whether or not he was eligible under the category of emotionally disturbed. Issue three is sufficiently pled to put District on notice of the issues and meaningfully prepare for a resolution session and due process hearing.

Issue four alleges that district denied Student a FAPE from August 30, 2009 to the time of filing of the complaint by failing to conduct appropriate assessments of all of his unique needs, failing to offer an appropriate placement, failing to offer appropriate related services including a behavior support plan and counseling services, failure to develop appropriate goals, and failure to develop an appropriate transition plan. When issue four is read together with the general factual allegations in the complaint, it is sufficiently pled to put District on notice of the issues and meaningfully prepare for a resolution session and hearing.

Issue five alleges that District denied Student a FAPE by failing to obtain informed consent from his parent/guardian to his December 1, 2008, November 24, 2009 and November 17, 2010 IEPs, before providing him special education and related services. Issue five is sufficiently pled to put District on notice of the issues and meaningfully prepare for a resolution session and due process hearing. Whether this claim falls outside of the statute of limitations, as discussed more fully below, is not appropriately decided in an NOI.

Issue six alleges that District violated procedural safeguards under the Individuals with Disabilities Education Act (IDEA) by failing to take steps to insure that Student's parent/guardian participated at Student's IEP meetings and whether the parent/guardian was afforded the opportunity to provide informed consent to his IEPs. As a result, Student alleges that District significantly impeded Parents' right to meaningfully participate in the decision making process and deprived Student of educational benefits. When issue six is read together with the general factual allegations in the complaint, it is sufficiently pled to put District on notice of the issues and meaningfully prepare for a resolution session and hearing. Whether this claim falls outside of the statute of limitations, as discussed more fully below, is not appropriately decided in an NOI.

Issue seven alleges that District procedurally violated IDEA by failing to provide prior written notice to Student's parent/guardian of changes made to Student's IEP. When issue seven is read together with the general factual allegations in the complaint, it is sufficiently pled to put District on notice of the issue and meaningfully prepare for a resolution session and hearing. Whether this claim falls outside of the statute of limitations, as discussed more fully below, is not appropriately decided in an NOI.

Issue eight alleges that District denied Student a FAPE by failing to provide a copy of Student's complete educational file to Student's parent/guardian through and including the time of the filing of the complaint. Issue eight is sufficiently pled to put District on notice of the issue and meaningfully prepare for a resolution session and hearing. Whether this claim falls outside of the statute of limitations, as discussed more fully below, is not appropriately decided in an NOI.

Issue nine alleges that because District denied Student a FAPE, as alleged earlier, Student is entitled to an order finding that he is entitled to compensatory education, which he more specifically refers to in his proposed resolution number four. Issue nine is sufficiently pled to put District on notice of the issue and meaningfully prepare for a resolution session and hearing. Whether this claim falls outside of the statute of limitations, as discussed more fully below, is not appropriately decided in an NOI.

Motion for Dismissal – Statute of Limitations

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 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...., special education law does not provide for a summary judgment procedure and OAH will not dismiss claims that have otherwise been properly pleaded.

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.

Here, District argues that portions of some or all of the issues in Student's complaint⁹ are barred by the statute of limitations because they are beyond the

⁹ District's introduction references issues one, two, five, six, seven and eight as falling outside of the statute of limitations. However, its discussion in “Part II – Grounds for

statutory time period. As discussed above, to be sufficient, there is no requirement that every detail of an alleged exception to the statute of limitations be alleged in a complaint. Moreover, a determination of whether an exception to the statute of limitations applies requires a factual finding by the hearing officer, and is therefore not appropriately decided in a motion to dismiss. Therefore, District's motion to dismiss must be denied. District may assert the statute of limitations as a defense at hearing.

ORDER

1. District's NOI is denied. Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. District's motion to dismiss issues or remedies that pertain to claims prior to August 29, 2009, is denied.

3. All dates shall remain as previously set.

Dated: September 13, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

Motion [to dismiss]' discusses only Issues one two, and portions of four and five. District's Conclusion seeks dismissal of Issues one and two, and portions of five, six, seven and eight. All issues in the complaint are considered under this analysis.