

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EL MONTE CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2012030222

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On March 07, 2012, Student filed a Request for Due Process Hearing (complaint) naming El Monte City Elementary School District as respondent.

On March 16, 2012, District filed its Notice of Representation, Motion to Dismiss Issue One, Notice of Insufficiency (NOI) and Response to Due Process Complaint. District's motion to dismiss argues that the first issue in the complaint is barred by the two year statute of limitations. District's timely NOI argues that the complaint does not provide sufficient details regarding the nature of the problems alleged.

District's NOI necessitates an order of determination within 5 days of filing. Student is entitled to file written opposition, if any, to the motion to dismiss within three business days of service of the motion to dismiss. Therefore, because the NOI must be resolved before consideration of Student's opposition, if any, to the motion to dismiss this order addresses only District's NOI.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.¹ 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 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.² 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.³

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁴ 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.⁵ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁶

DISCUSSION

The complaint sets forth two “problems”: 1) that an assessment conducted in 2010 was insufficient because it relied solely on the KABC-II, and should have been supplemented with further tests for auditory processing, processing speed, intelligence, and academic performance; and 2) that Student was denied a FAPE at an IEP in February of 2012 because Student should have been offered a male one-to-one aide given his unique needs in auditory processing and his medical needs. The complaint includes facts related to the problems that describe particular assessment findings and notes by date, classroom behavior, testing results and health concerns. Parent’s proposed resolutions are clearly defined and include an IEE, a one-to-one aide, NPS placement, and compensatory education.

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

² 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

³ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁴ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁵ *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.].

⁶ 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).

adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. The IDEA requires only a “description of the nature of the problem” (20 U.S.C. (b)(7)(A)(ii)(III)), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings. Therefore, Student’s complaint is sufficient.

ORDER

1. The allegations in the complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. This matter shall proceed as scheduled.

Dated: March 19, 2012

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings