

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012031157

ORDER DENYING NOTICE OF
INSUFFICIENCY AND DENYING
MOTION TO DISMISS

On March 28, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming District. On April 12, 2012, District filed a Notice of Insufficiency (NOI) as to Student's complaint, and, concurrently within the same document, a Motion to Dismiss certain allegations of the complaint. This Order addresses both the NOI and Motion to Dismiss, and, for the reasons dismissed below, both are denied.

NOI

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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

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(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

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.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

DISCUSSION

Student’s complaint was filed on March 28, 2012. The NOI does not indicate when District received the complaint and therefore the undersigned assumes that District received the complaint on March 28, 2012. District’s transmission of the NOI to OAH by faxination began at 4:57 p.m. on April 12, 2012, the fifteenth day after receipt, and therefore it is timely.

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).

Student's complaint identifies three issues, each with three sub-issues.

First, Student's complaint alleges that, from March 2010 through the end of the 2009-2010 school year, District denied Student a FAPE by: 1) failing to offer appropriate goals; 2) failing to hold IEP meetings within statutory timelines; and 3) failing to offer and provide appropriate placement and services in the areas of reading, writing and math.

Next, Student's complaint alleges that, for the 2010-11 school year, District denied Student a FAPE by: 1) failing to offer appropriate goals; 2) failing to hold IEP meetings within statutory timelines; and 3) failing to offer and provide appropriate placement and services in the areas of reading, writing and math.

Finally, Student's complaint alleges that, for the 2011-12 school year, to the date of filing the complaint, District denied Student a FAPE by: 1) failing to offer appropriate goals; 2) failing to hold IEP meetings within statutory timelines; and 3) failing to offer and provide appropriate placement and services in the areas of reading, writing and math.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. The complaint identifies the issues and adequate related facts about the problems to permit District to respond to the complaint and participate in a resolution session and mediation, and to prepare for hearing. The NOI is therefore denied.

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 [hereafter *Wyner*].) 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.

Here, District contends that some of the allegations in the complaint are either outside of the statute of limitations, or that District is not the responsible party. As such, District seeks dismissal of those allegations. However, District 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. Therefore, the motion to dismiss is denied. District may raise its defenses at hearing.

ORDER

1. On the NOI: The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. On the motion to dismiss: District's motion to dismiss is denied.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: April 13, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings