

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EASTSIDE UNION SCHOOL DISTRICT
(LANCASTER).

OAH CASE NO. 2012050086

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

On April 30, 2011, Parent, acting pro se, on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Eastside Union School District (District) as respondent. On May 7, 2012, the District filed a Notice of Insufficiency (NOI) as to the complaint. On May 8, 2012, the Office of Administrative Hearings (OAH) issued an order finding the complaint insufficient and permitting Student to file an amended complaint.

On May 15, 2012, Student filed her amended complaint. The amended complaint contains one issue. Student's single allegation is that Parent was not invited to the interim individualized education program (IEP) meeting held on April 26, 2010, and that District concealed the IEP document from Parent for approximately two years.

On May 30, 2012, the District filed an NOI and motion to dismiss as to the amended complaint. As to the NOI, the District contends that the Student fails to describe with specificity the nature of the issue, fails to allege sufficient facts to support the allegation, and that the proposed resolutions are not clear. In its motion to dismiss, the District contends that the Student's claim violates the two year statute of limitations.

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

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).

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 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

DISCUSSION

The issue is alleged with specificity. Student contends that the District committed a procedural violation of the Individuals With Disabilities Education Act (IDEA) by holding an interim IEP meeting on April 26, 2010 without notification to Student’s parent which prevented the parent from participating in the IEP decision making process.

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).

The facts alleged in Student's amended complaint are sufficient to put the District on notice of the facts forming the basis of the complaint. Student's amended complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation.

Therefore, Student's issue is sufficient.

As to the Proposed Resolutions

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) In her amended complaint, Student proposes as resolutions that (1) the District give a complete and full disclosure relating to the April 26, 2010 IEP meeting; (2) to compel the District to have all participants at the April 26, 2010 IEP meeting to be available for depositions; (3) to compel Dr. Marshall to provide a full disclosure under oath; (4) produce to Student certain documents that Student requested; (5) to have Student return to her school of origin; and (5) to compensate Student for attorney costs and for time spent by Parent on this matter.

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Thus, OAH can order remedies consistent with its jurisdiction such as compensatory education, reimbursement for costs to educate the child where the District has failed to provide a free appropriate public education (FAPE), or to mandate that the District change an IEP as to placement and services where a student is not receiving a FAPE. The resolutions proposed in the amended complaint seek "complete and full disclosure" by the District and Dr. Marshall, to order IEP team members to be deposed, to return Student to her school of origin, and to pay for undisclosed costs such as Parent's time. Other than the proposed resolution to return Student to her school of origin, these are beyond OAH's jurisdiction. Thus, Student's resolutions for all relief except for her placement request are insufficient.

However, Student has met the statutorily required standard of stating a resolution, to return Student to her school of origin, to the extent known and available to her at the time.

MOTION TO DISMISS

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, Student alleges that the April 26, 2010 IEP was concealed from Student by the District "for nearly two years." Thus, Student is alleging that the District withheld information from Student's parent that it was required to provide. This is one of the exceptions to the two year limitations period of Education Code section 56505, subdivision (1). Student has alleged a valid exception to the Statute of Limitations. The District, if it so desires, may assert this affirmative defense at the due process hearing.

ORDER

1. The amended complaint is deemed sufficient under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).
2. The District's motion to dismiss is denied without prejudice.
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: May 31, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings