

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CLAREMONT UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012070097

ORDER DENYING NOTICE OF  
INSUFFICIENCY AND DENYING  
MOTION TO DISMISS

On July 03, 2012 Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Claremont Unified School District (District) as respondent. On July 11, 2012, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint in combination with a Motion to Dismiss. This order addresses both motions, which are denied for the reasons discussed below.

*Notice of Insufficiency*

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> 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 resolution of the problem to the extent known and available to the party at the time.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the

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<sup>1</sup> 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).

<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> 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.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

Student’s complaint alleges that, at the time of filing, she was in the tenth grade. She resided with her parents in Upland, California. Upland Unified School District qualified her as eligible for special education in 2005. Student has attended private school within District’s boundaries since the 2006-2007 school year. Student also alleges that parents requested District to assess Student beginning in June 2008, that District did not affirmatively respond with an assessment plan until mid-May, 2010, that District started but never completed assessments of Student in July 2010, that District did not offer Student an individualized education plan (IEP), and that District did not consider prior evaluations of Student or her parents’ concerns about Student in the context of developing an IEP for Student.

Student’s complaint raises the following issues:

1. Did District procedurally and substantively denied Student a free appropriate public education (FAPE) by failing to timely and appropriately assess Student in all areas of suspected disability during the applicable statutory period?
2. Did District procedurally and substantively deny Student a FAPE by failing to provide her with an appropriate IEP during the applicable statutory period?

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<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *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.].

<sup>7</sup> 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).

3. Did District deny Student a FAPE by denying her parents the ability to meaningfully participate in the development of an individualized education plan during the applicable statutory period?

Student's complaint includes a proposed resolution seeking an Order compelling District to assess Student, and for compensatory relief.

District argues in its NOI that the complaint is not clear from the complaint as to whether Student attended school within the District during the applicable time frames, and whether District is the responsible local educational agency (LEA) with respect to assessments of student. However, those issues must be determined on the merits after the hearing ALJ hears evidence on the matter. They are not appropriately determined in an NOI.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint and the proposed relief sought by Student. The 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, mediation and a due process hearing.

District also argues that Student's proposed resolutions cannot be implemented by District if it was not the responsible LEA does not necessarily defeat their sufficiency with regard to pleading requirements, and therefore they are insufficient. 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time. Whether the resolutions are actually appropriate is a matter to be determined at hearing.

Therefore, the complaint is sufficient and the NOI must be denied.

*Motion to Dismiss*

Although OAH will grant 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.

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's Motion to dismiss claims in the complaint that arose prior to July 2010 is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Although District argues that Student does not assert any of the exceptions to the statute of limitations in the complaint, a determination of whether any applicable exceptions may apply requires evidentiary findings by the hearing judge. Because the applicability of exceptions to the statute of limitations requires evidentiary findings that will be made at hearing, the motion must be denied.

#### ORDER

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

Dated: July 12, 2012

/s/  
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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings