BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2012090695 ORDER DENYING MOTION TO DISMISS AND FINDING OF SUFFICIENCY OF COMPLAINT

On September 24, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) naming San Luis Costal Unified School District (District) as the respondent. On October 1, 2012, the District filed a Motion to Dismiss Student's complaint and, in the alternative, a Notice of Insufficiency (NOI) of Student's Issues A, B, and F.

APPLICABLE LAW

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. (l); 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 (l), 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.

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.

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.[1] 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.[2]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[3] 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.[4] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[5]

DISCUSSION

1. Request for Dismissal: The District contends that Student's complaint revolves around the Individualized Education Plan (IEP) offered on August 30, 2010, and therefore, all issues raised by Student in connection with that IEP are beyond the Statute of Limitations. Student's issues, however, do not dispute the terms of the August 30, 2010 IEP, but rather contend that the District denied Student a free appropriate public education (FAPE) by failing meet statutorily defined timelines which arose subsequent to the IEP, and by failing to comply with the terms of the IEP after its creation and within the last two years. Further, although the District points out that Student could have filed his complaint earlier, i.e., in 2010 or 2011, he was under no obligation to do so. The ongoing onus of providing a Student with FAPE lies with the District, not the Student or his family. Nor was Student required to file a compliance complaint with the California Department of Education, as Student has

---

[1] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

[3] Sen. Rep. No. 108-185, *supra*, at p. 34.

[4] *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.].

[5] 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).

clearly alleged that the District's non-compliance with the IEP has resulted in a denial of FAPE to Student.

Here, the District's is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

2. District's Notice of Insufficiency: The District's primary concerns with Student's complaint lies with the Statute of Limitations. As indicated above, the complaint alleges the District failed to subsequently meet its FAPE obligations under the terms of the August 30, 2010 IEP; the District's alleged failures occurred within the authorized time frame of the Statute of Limitations; and the District's alleged failures resulted in a denial of FAPE to Student. As such, Student's complaint, in its entirety is sufficient.

ORDER

1. The District's Motion to Dismiss is denied.

2. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: October 03, 2012

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings