

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GLENDALE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011030489

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AND DISMISSING
ISSUES BASED UPON STATUTE OF
LIMITATIONS

On March 7, 2011, Student filed a Due Process Hearing Request¹ (complaint) naming Glendale Unified School District (District).

On March 17, 2011 filed a Notice of Insufficiency (NOI) as to Student's complaint and a motion to dismiss issues based upon 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 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

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(b)(7)(A)(ii)(III) & (IV).

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 Individuals with Disabilities Education Act 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

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.

DISCUSSION

Student’s complaint alleges four main issues, with sub-issues and headings contained therein. These issues are adequately defined and delineated and they state legally cognizable claims that are supported by sufficient factual detail and should allow District to identify the issues and related facts and to prepare its defense. Similarly, Student’s complaint identifies eight separate “Proposed Resolutions,” which identify Student’s suggested solutions.

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 gravamen of District's challenge to Student's pleading sounds more in the nature of a disagreement about the truth of the averments, rather than as an appropriate challenge to their legal sufficiency. These are matters District may properly raise in other appropriate motions or in defense at the due process hearing. Accordingly, the issues raised in Student's complaint are legally sufficient.

District's motion to dismiss, however, is well-taken. Student's complaint contains averments that he was denied a FAPE at times falling outside the two year statute of limitations, yet the complaint does not allege factual support, such as District's misrepresentation, to support an argument that the statute of limitations does not apply to this matter. Accordingly, any issues that arose earlier than two years before Student's filed his complaint are dismissed. Any issues that allege claims prior to the two year statute of limitations are accordingly limited.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.
3. To the extent that Student's complaint alleges issues arising earlier than two years before the filing of the complaint, they are dismissed or appropriately limited.

Dated: March 21, 2011

/s/

GARY GEREN
Administrative Law Judge
Office of Administrative Hearings