

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2014120976

ORDER: (1) FINDING DUE PROCESS
COMPLAINT SUFFICIENT, AND (2)
LIMITING ISSUES AT HEARING TO
TWO YEARS PRIOR TO THE FILING
OF THE COMPLAINT

On December 17, 2014, Student filed a due process hearing request¹ (complaint) naming San Benito High School District (San Benito), Eastside Union High School District (Eastside) and Santa Clara County Office of Education (SCCOE).

On January 2, 2015, Eastside and SCCOE filed a notice of insufficiency. In the same document, Eastside and SCCOE included a motion to dismiss claims beyond the two-year statute of limitations, which is deemed a motion to limit issues at hearing.

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

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).

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

The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445 (*J.W. v. Fresno*); *Breanne C. v. Southern York County School Dist.* (M.D. Pa. 2009) 665 F.Supp.2d 504, 511-512; *E.J. v. San Carlos Elementary School Dist.* (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) 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 (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or (ii) by the local educational agency’s withholding of information that was required to be provided to the parent.

DISCUSSION

Notice of Insufficiency

The facts alleged in Student’s complaint are sufficient to put Eastside and SCCOE on notice of the issues forming the basis of the complaint. Student, a non-verbal high school

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).

student with autism, alleges that he attended an SCCOE special day program while a student in Eastside, but despite increased maladaptive behaviors, including serious assaults on other students and staff beginning in October 2013, Eastside and SCCOE failed to implement positive behavioral interventions and instead isolated Student from his classmates. Student also alleges that after his transfer into San Benito in September 2014, San Benito similarly isolated Student within the classroom and also suspended Student repeatedly. In November 2014, San Benito offered to place Student at a nonpublic school for students with severe behavioral issues, but when Parents refused consent, San Benito filed a due process hearing request on December 10, 2014, for an order placing Student at the nonpublic school as an interim alternative educational setting. Student's complaint alleges that from December 15, 2012, respondents denied Student a FAPE by failing to conduct appropriate behavioral assessments, failing to offer Student a FAPE in the least restrictive environment and failing to implement Student's individualized education programs, including provision and use of a communication device and a safety harness for the school bus.

Eastside and SCCOE argue that Student alleges specific conduct or events, but fails to allege specific actions or incidents occurring in each and every time period alleged in the complaint. In his complaint, Student makes factual allegations of ongoing failure to assess, and lack of educational and behavior supports to meet Student's needs from December 15, 2012. The specific incidents alleged provide examples of the type of conduct that gave respondents notice of the need for assessment and additional behavioral supports, but do not limit Student's issues to the "time periods" of each incident. Student's 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 statement of the claims against Eastside and SCCOE is sufficient.

Motion to Limit Issues

The statute of limitations on claims under the IDEA and California special education law is two years. Student's complaint alleges a denial of FAPE from December 15, 2012, and does not allege facts demonstrating an exception to the statute of limitations. Eastside and SCCOE do not seek a dismissal of the entire complaint, but an order that the issues for hearing be limited to events and conduct occurring within two years of the filing of the complaint. Accordingly, the motion to limit the issues to events and conduct that occurred on or after December 17, 2012 is granted.

This order does not limit Student's right to amend the complaint under the procedure set forth in Education Code section 56502, subdivision (e) to allege facts tolling the statute of limitations, if applicable.

ORDER

1. Student's complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. The issues for hearing will be limited to events and conduct that occurred on or after December 17, 2012.
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: January 5, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings