BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013051022 ORDER OF DETERMINATION OF SUFFICIENCY OF AMENDED DUE PROCESS COMPLAINT

On May 23, 2013, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint), naming the Newport-Mesa Unified School District (District) as respondent.

On June 4, 2013, the District filed a motion to dismiss issues barred by the applicable two year statute of limitations.[1] Student filed his opposition on June 4, 2013. On August 7, 2013, OAH, by Administrative Law Judge Alexa J. Hohensee, issued an order granting in part and denying in part the District's motion. OAH limited issues one through seven to two years prior to the filing of the complaint. The order also stated that should Student want to raise issues that arose prior to May 23, 2011, "he must seek leave to amend his complaint to allege specific factual allegations that, if true, would demonstrate that an exception to the two-year statute of limitations applies."

On September 3, 2013, Student filed with OAH an amended complaint (AC). This was deemed a motion for leave to file an amended complaint. No opposition was received from the District. On September 9, 2013, OAH, by the undersigned, granted Student leave to file the AC.

On September 16, 2013, the District filed a Notice of Insufficiency as to the AC contending that Student failed to allege sufficient facts to demonstrate an exception to the two year statute of limitations applies.

[1] The applicable statutes are Education Code § 5605 subd. (1) and 20 U.S.C. § 1415(f)(3)(C)..

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 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] In other words, the sufficiency of the complaint is

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[2] 20 U.S.C. § 1415(b) & (c).

[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).

determined whether or not the respondent has been given notice as to the claims being alleged against it.

DISCUSSION

The facts alleged in Student's AC are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's AC identifies the issues and adequate related facts about the problem to permit the District to respond to the AC, which it did on September 13, 2013 as well as filing a motion to dismiss all claims beyond the applicable statute of limitations, and to participate in a resolution session and mediation. Whether or not the facts alleged demonstrate, as a matter of law that an exception to the two year limitations period applies is more properly handled by the District's motion to dismiss.

Therefore, Student's AC is sufficient to put the District on notice of the allegations being made against it.

ORDER

1. The amended 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.

Dated: September 16, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings