BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CAMPBELL UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2015050611 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 04, 2015, Parents on behalf of Student filed a Due Process Hearing Request[1] naming Campbell Union High School District.

On May 14, 2015, District filed a Motion to Dismiss[2] and Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[3] 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).

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[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] District contends that Student's complaint should be dismissed because these claims are outside the two-year statute of limitations. Moving to dismiss in combination with an NOI is not the proper means by which to seek determination of the District's contentions, as the only determination to be made upon the filing of an NOI is the sufficiency of the complaint on face. District's contention regarding the limitations period may be litigated at hearing as an affirmative defense, or may be addressed in a separately-filed Motion to Dismiss.

[3] 20 U.S.C. § 1415(b) & (c).

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 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.[4] 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.[5]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] 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.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

DISCUSSION

Student's complaint states two issues. In the first, he asserts that the April 23, 2013, individualized educational program did not meet his needs for speech and language therapy, as no speech and language therapy was given to him despite a recognized disability of Speech and Language Impairment. He proposes a remedy of compensatory speech and language therapy. District argues that it can find no claim within these facts that is within the statute of limitations. As noted above, that argument may not be made in a Notice of Insufficiency. Accordingly, the first issue is sufficiently pled.

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[4] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

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

[7] *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.].

[8] 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's second issue charges that he was not offered a transition plan for his post-school activities. He proposes the resolution that he be given "academic instruction that will allow student to benefit from and transition to his post-school activities." District asserts that this is insufficiently pled because student has not stated which IEP is insufficient or how the IEP is insufficient. District's argument is unpersuasive.

Student's assertion is that there was a complete lack of a transition plan. He is not alleging insufficiency in the transition plan, but absence of any plan. The law requires[9] that a transition plan be in place for a disabled student upon graduation. Student has alleged that District completely failed in its obligation to plan his transition. No more detail is required to put District on notice of Student's theory.

The facts alleged in Student's complaint and proposed resolutions are sufficient to put the District on notice of the issues forming the basis of the complaint and remedies sought. 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 claims are sufficient.

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.

DATE: May 20, 2015

/s/

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings

[9] Beginning not later than the first IEP to be in effect when a child with a disability turns 16, and updated annually thereafter, the IEP must also include appropriate measurable postsecondary goals related to training, education, employment, and, where appropriate, independent living skills. (20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(aa)-(bb); 34 C.F.R. § 300.320(b) (2006); Ed. Code, § 56345, subd. (a)(8).) Every such IEP must also include transition services to assist the child in reaching those postsecondary goals. (Ibid.)