BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>OAKLAND UNIFIED SCHOOL DISTRICT. | OAH Case No. 2017100090<br><br>ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT |

On September 28, 2017, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Oakland Unified School District. On October 20, 2017, District filed a Notice of Insufficiency, and in the alternative, a Motion to Dismiss. District seeks to dismiss Student's claims barred by the two-year statute of limitations. On October 25, 2017, Student filed an opposition to the motion to dismiss/NOI.

## APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) 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. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. 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, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

The statute of limitations in California is 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.

In *Avila v. Spokane School District 81*, (9th Cir. 2017) 852 F.3d 936 (*Avila*), the Ninth Circuit recently held that the two-year statute of limitations for filing a request for due process pursuant to the Individuals with Disabilities Education Act begins when a parent "knew or should have known about the alleged action that forms the basis of the compliant." (*Avila*, at p. 944.) At that point, parents have two years to file their request for due process. (20 U.S.C. § 1415(f)(3)(C) and 1415(b)(6)(B).)

## DISCUSSION

Student contends that the two-year statute of limitations should be tolled based on the District's alleged misrepresentations and withholding of information. Student claims that on February 13, 2012, Parent consented to an initial assessment plan but was not provided her procedural rights and safeguards. Student further asserts that Parent does not recall reviewing or being provided her procedural rights and safeguards at the April 30, 2012 IEP team meeting.

Additionally, Student claims that on or about April 18, 2013, District failed to provide and explain to Parent, her procedural rights and safeguards relating to a plan to conduct a psychological educational assessment. Student's oppositions alleges for the first time that District denied Parent her procedural safeguards in 2014 and Parent remained unaware of the issues forming the basis of the compliant until an attorney reviewed the records. However, Student's complaint does not allege any failures on the part of District to provide Parent with her procedural rights and safeguards after April 18, 2013, and fails to assert that Parent knew or could have known of the issues only after consulting with an attorney.

Furthermore, the complaint also contends that District withheld records and information contained in Student's educational files. Among the records that Student expected to receive pursuant to his September 13, 2017 records request were notices of the April 30, 2012 IEP team meeting; test protocols, procedural safeguards, behavioral records, and attendance records from the 2011-2012 school year through the 2016-2017 school year; a page of the April 18, 2013 Assessment Plan listing the assessments; a signature page of the September18, 2013 assessment plan; excusal forms/psych reports/teacher reports for all IEP team meetings that did not include the full attendance of IEP team members. Student argues the withholding of these records warrants an extension of the two-year statute of limitations.

District contends that Student's claims should be limited to the two years from the filing of the complaint and no exceptions apply to extend Student's claims beyond that. District argues that Parent was aware of her procedural rights and safeguards no later than May 9, 2013, and therefore claims related to alleged violations prior to September 28, 2015 should be barred.

Here, even assuming District failed to provide Parent with her procedural rights and safeguards in 2012 and in April 2013, the complaint does not alleged that Parent was not given her rights and safeguards on May 9, 2013. Student's complaint does not dispute District's assertion that it provided Parent her procedural rights and safeguards on May 9, 2013. The compliant does not allege or provide facts to support that Parent remained unaware of her procedural rights and safeguards from that point forward. Hence, as of May 9, 2013, Parent either knew or reasonably should have known, of alleged actions on the part of District that violated Parent's rights under the IDEA. Therefore, Student had until May 9, 2015, to request a due process hearing for claims arising from February 13, 2012, April 30, 2012, and April 18, 2013 alleged violations.

Furthermore, the compliant does not allege the educational records sought, but allegedly withheld, pursuant to Student's September 13, 2017 records request were records denied to Parent prior to September 28, 2015, two years prior to the filing of the complaint. The complaint also makes no claim that the records allegedly withheld by District are records that were required to be provided to Parent absent a parental request. The September 13, 2017 records request is the only request Student claims Parent to have made. In addition, Student does not allege any specific misrepresentation made by District prior to September 28, 2015, that it had resolved problems forming the basis of the complaint.

The complaint does not factually dispute that District provided Parent her procedural rights and safeguards as required, from May 9, 2013 through September 28, 2015. Also, no factual dispute is raised in the complaint as to whether information Parent was entitled to receive without a request, were withheld by District prior to September 28, 2015. Therefore, the complaint fails to establish a factual dispute as to whether either exception to the two-year statute of limitations applies. The complaint also does not factually dispute that Parent knew or should have known of her procedural rights under the IDEA no later than May 9, 2013. Therefore, Parent should have known to file a request for due process within two years of alleged violations occurring thereafter, i.e., failing to include required IEP team members at the December 15, 2014 IEP team meeting. Though Student's opposition provides additional support to toll the two-year statute of limitations, it cannot cure the insufficiency of the complaint.

The complaint falls short of providing District with an awareness and understanding of the issues forming the basis of the complaint as to claims occurring prior to September 28, 2015. As a result, it does not provide District with sufficient information to adequately prepare for the hearing and how to participate in resolution sessions and mediation as to those claims. Therefore, Student's complaint is insufficiently pled as to claims occurring prior to September 28, 2015.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to claims occurring prior to September 28, 2015.

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

[2] The filing of an amended complaint will restart the applicable timelines for a due process hearing.

4. If Student fails to file a timely amended complaint, the matter will proceed as scheduled as to the remaining issues that occurred on or after September 28, 2015.

DATE: October 26, 2017

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings