BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WALNUT CREEK SCHOOL DISTRICT.

OAH CASE NUMBER 2022120375

ORDER FINDING ISSUE 3 OF AMENDED DUE PROCESS COMPLAINT INSUFFICIENT

January 4, 2023

On December 13, 2022, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Walnut Creek School District. On December 23, 2022, in response to a notice of insufficiency filed by Walnut Creek, OAH issued an order finding Issue 3 of the complaint insufficient because it was barred by the statute of limitations.

On December 29, 2022, Student filed an amended complaint. On January 4, 2023, Walnut Creek filed a timely notice of insufficiency as to Issue 3 of the amended complaint. Walnut Creek again asserts that Issue 3 is barred by the statute of limitations.

The named parties have the right to challenge the complaint's sufficiency. (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).

A complaint is sufficient if it (1) describes the problem relating to the proposed change regarding the student's identification, evaluation, or educational placement, or providing the student a free appropriate public education, called a FAPE, (2) includes facts about the problem, and (3) includes a proposed resolution 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 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, and 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 hearing due to specific misrepresentations by the school district it had resolved the problem forming the basis of the complaint, or the school district withheld information it was required to provide to the parent.

Consequently, both federal and California law contain a two-year statute of limitations for special education administrative actions and require a finding confirming when the parent knew of the facts forming the basis of the claim. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2); Ed. Code, § 56505, subd. (l).) California, however, has adopted its own manner of applying this discovery rule.

Under California law, a claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action, for example, when the parent knows the education provided to their child is inadequate. (*M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012 Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, ** 17–19 (*M.M.*), affd. in part and revd. in part on other grounds by *M.M. v. Lafayette School Dist., et al.* (9th Cir. 2014) 767 F.3d 842, 859.) A statute based upon the discovery rule begins to run when a party is or should have been aware of the facts supporting a legal claim, not earlier, when the act occurred, and not later, when a party learns it has a legal claim. (*M.M., supra,* at *18).

It does not matter if the parent understood the inadequacy was a legal claim. Rather, the inquiry is whether the parents had knowledge of the problem. Congress intended to obtain a timely and appropriate education for special needs children. Congress did not intend to authorize the filing of claims for a denial of a FAPE many years after the alleged wrongdoing occurred. (*Alexopulous v. San Francisco Unified School Dist.* (9th Cir. 1987) 817 F.2d 551, 556.)

To invoke an exception to the two-year statute of limitations, a parent must show the school district's misrepresentation or withholding of information caused the parent's failure to file the due process complaint on time. Therefore, where the evidence shows the parents were fully aware of their procedural options, they cannot excuse a late filing by pointing to the school district's failure to formally notify them of those options. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F.3d 233, 246-247.)

Here, Student alleges six issues. At Issue 3, he claims he was denied a FAPE during the 2019-2020 school year and extended school year because Walnut Creek did not timely conduct a psychoeducational assessment of Student. Student alleges Parents reported concerns with Student's reading level and their belief that Student had dyslexia, and presented a doctor's letter requesting a full academic assessment, at an individualized education program, or IEP, team meeting on September 20, 2019, but no assessment was conducted. Student filed his complaint on December 13, 2022, more than two years after the end of the 2019-2020 school year and extended school year, and the claim at Issue 3 is barred unless an exception to the statute of limitations applies.

Student's amended complaint clearly alleges that Parents understood Student was doing poorly in school and needed to be assessed during the 2019-2020 school year. Parents made a second request for assessment of Student's reading and writing skills on November 22, 2019. Parents raised their concerns a third time at an IEP team meeting on December 20, 2019, but Walnut Creek declined to assess Student before the end of the 2019-2020 school year. The amended complaint alleges that during the 2019-2020 Covid-19 school shutdown, Student could not focus on virtual instruction tasks long enough to complete them, experienced mental health struggles, and that Parents were not equipped to manage Student's learning needs. It is irrelevant whether

Parents understood that they had a legal claim during the 2019-2020 school year. They were aware that Walnut Creek did not assess their child as requested or needed.

The amended complaint attempts to toll the two-year statute of limitations by alleging Walnut Creek offered a reading program to address Student's reading problems at the September 20, 2019 IEP team meeting, and Parents both trusted Walnut Creek and were unaware that their request triggered a duty in Walnut Creek to assess. Student's allegation that Parents trusted Walnut Creek and did not pursue assessment is directly contradicted by Student's claims that Parents continued to request assessments and observed Student's struggles throughout the 2019-2020 school year.

More importantly, this allegation falls short of a misrepresentation by Walnut Creek, or a withholding of required information. If a school district's failure to timely assess, or to offer services satisfactory to the parent, were sufficient to constitute a misrepresentation or withholding of information for purposes of tolling the statute of limitations, any claim of delay or insufficient services could be brought at any time. Such an interpretation of the statute of limitations would be in complete disregard of Congress's mandate that FAPE claims be brought in a timely manner. Here, Parents' alleged trust that Walnut Creek's programs would address Student's educational needs, particularly in contradiction to their statements and observations, does not state a misrepresentation or withholding of information by Walnut Creek, and does not toll the statute of limitations. Student's Issue 3, alleging a failure to timely conduct a psychoeducational assessment during the 2019-2020 school year, is insufficiently pled.

ORDER

1. Issue 3 of Student's amended complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

2. Student will be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The second amended complaint must comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and must be filed not later than 14 days from the date of this order. The filing of a second amended complaint will restart the applicable timelines for a due process hearing.
4. If Student fails to file a timely second amended complaint, the hearing shall proceed only on Issues 1, 2, 4, 5, and 6 of Student's amended complaint.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings