BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT AND

LARCHMONT CHARTER SCHOOL.

OAH CASE NUMBER 2021020730

ORDER OF DETERMINATION OF PARTIAL SUFFICIENCY OF DUE PROCESS COMPLAINT

MARCH 11, 2021

On February 18, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Los Angeles Unified School District and Larchmont Charter School.

On March 5, 2021, Larchmont filed a Notice of Insufficiency as to the complaint. Larchmont argues that the complaint is insufficient because it fails to make clear what factual allegations, issues and proposed resolutions are made against Larchmont, as opposed to Los Angeles. Larchmont also argues that it is unclear which individualized education programs, or IEPs, are at issue regarding each issue alleged. Relying on an

attached declaration, Larchmont argues that while Student was receiving home hospital services as of October 2019, Student was required to disenroll in Larchmont and enroll at Los Angeles, therefore Larchmont was not the responsible local educational authority at that time. Larchmont asserts Student stopped attending Larchmont after the 2018-2019 school year but appears to make claims against it for the subsequent school years. Larchmont also claims the complaint is insufficient because it fails to allege any facts which would toll the statute of limitations to cover the November 8, 2018 IEP or any other conduct prior to February 18, 2019.

APPLICABLE LAW

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; (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. (*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.)

A request for due process hearing shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (Ed. Code § 56505; 20 U.S.C. § 1415 (f)(3)(C).) The time period does not apply if the parent was prevented from requesting a hearing because of either, (1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the request; or (2) the withhold of information by the local educational agency from the parent that was required to be provided to the parent. (Ed. Code § 56505.)

DISCUSSION

Here, Student's complaint alleges three claims in the complaint, two of which are sufficient and one which is insufficient. The issues are discussed below.

The first issue alleges that Respondents failed to offer Student a free appropriate public education, or FAPE, during the 2018-2019, 2019-2020, and 2020-2021 school

years by failing to offer Student an appropriate placement and related services in the areas of counseling and behavior intervention, an appropriate behavior intervention plan, social skill supports and research-based interventions, and adequate extended school year services, such that Parents were compelled to fund a program. Although Larchmont takes issue with the fact that complaint uses a multitude of terms to refer to Larchmont and Los Angeles, that does not render the complaint insufficient. Page one sets forth all the various terms Student has used to refer to both Respondents. The first issue is alleged against both Respondents.

Larchmont's argument that it was not responsible local educational agency is not a proper basis for filing a notice of insufficiency given the allegations in the complaint that Larchmont's position that it lacked responsibility for Student was improper. Specifically, Student's complaint alleges that Student attended Larchmont through fifth grade, and thereafter was placed by Parents at Bridges Academy after two 2019 psychiatric hospitalizations because neither Respondent offered placement and services. Student's complaint alleges that she was still a student at Larchmont when she was well enough to return to school and that Parents continued to seek support and reassessment from Larchmont, but that Larchmont claimed it was no longer responsible for Student and that Student was Los Angeles' responsibility, and that neither Respondent contacted Parents for purposes of convening Student's November 2020 IEP team meeting. Larchmont's claim that it was not the responsible local educational agency after October 2019 requires the development of a factual record at hearing.

Notwithstanding the foregoing, Student's first issue is insufficient because it fails to allege which IEPs are at issue for each claimed deficiency asserted as part of the first issue. The first issue appears to be based at least in part on conduct during the 2018-2019 school year, including the November 2018 IEP. However, the period prior to

February 18, 2019 is outside the two-year statute of limitations and Student has failed to plead either exception to the statute of limitations, or any facts supporting either exception. The failure to specify the IEPs at issue with regard to each claimed deficiency and to the failure to allege sufficient facts supporting claims outside the two year limitations period renders the complaint vague and confusing and does not provide Larchmont with sufficient information needed to prepare for hearing. For these reasons, the second issue is insufficient.

The second issue alleges that Student's IEPs for the 2018-2019 and 2019-2020 school years denied Student a FAPE by failing to state accurate present levels of performance and measurable annual goals because they failed to properly assess Student. Again, although Larchmont takes issue with the fact that complaint uses a multitude of terms to refer to Larchmont and Los Angeles, that does not render the complaint insufficient. The second issue is alleged against both Respondents.

As with the first issue, Larchmont's claim that it was not the responsible local educational agency is not a proper basis for filing a notice of insufficiency based on the allegations in this case. Larchmont's claim that it was not the responsible local educational agency after October 2019 requires the development of a factual record at hearing.

However, like the first issue, the second issue is insufficient because it fails to allege which IEP is at issue for each claimed IEP deficiency and appears to make claims based on conduct outside the applicable statute of limitations period, including part of the 2018-2019 school year, including the November 2018 IEP. Student has failed to plead either statutory exception to the statute of limitations, or facts supporting an exception. The failure to specify the IEPs at issue with regard to each claimed deficiency and to the failure to allege sufficient facts supporting claims outside the two year

limitations period renders the complaint vague and confusing, and does not provide Larchmont with sufficient information needed to prepare for hearing. For these reasons, the second issue is insufficient.

The third issue alleges that Respondents denied Student a FAPE based on procedural violations, specifically, the failure to give prior written notice regarding the failure to hold an annual IEP team meeting and develop an IEP for the 2020-2021 school year, and failing to convene an IEP team meeting and make an offer of special education and related services for the 2020-2021 school year. Again, although Larchmont takes issue with the fact that complaint uses a multitude of terms to refer to Larchmont and Los Angeles, that does not render the complaint insufficient. The third issue is alleged against both Respondents.

As with the first and second issues, Larchmont's claim that it was not the responsible local educational agency after October 2019 requires the development of a factual record at hearing and is not a proper basis for filing a notice of insufficiency based on the allegations in this case. Issue three is supported by factual allegations. It complies with the requirements of Section 1415(b)(7) because it is pled with sufficient information to provide Larchmont with the required notice of a description of the problem and the facts relating to the problem. The third issue is sufficiently pled.

Student's proposed resolutions requests include placement, reimbursement, funding for speech services, compensatory education and the development of an appropriate IEP. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has requested these proposed resolutions be provided by "District," and that the relief is based on the "LEAs'" or LEA's" conduct. On page one of the complaint Student has defined "District," LEA" and LEAs" to mean both Larchmont

and Los Angeles. Larchmont may not approve of the definition of those terms, but it does not render the stated resolutions insufficiently pled. Student has met the statutorily required standard of stating a resolution.

ORDER

1. Issues one and two, labeled A and B under "Issues for Hearing," are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
2. Issue three, labeled C under "Issues for Hearing," is sufficient under title 20 United State Code section 1415(b)(7)(A)(ii).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. 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. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue three in Student's complaint.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings