BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SALINAS CITY ELEMENTARY SCHOOL DISTRICT, SALINAS UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018110478 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 9, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Salinas City Elementary School District, and Salinas Union High School District. On November 21, 2018, both school districts filed motions to dismiss, or in the alternative, notices of insufficiency. These motions will be considered as notices of insufficiency, and will be treated as such.

APPLICABLE LAW

Sufficiency of the Complaint

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.

[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).

§ 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.)

Statute of Limitations

The statute of limitations for the filing of special education due process hearing requests in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) An action must be filed within two years from the date a party knew or had reason to know of the facts underlying the action. (Education Code section 56505, subdivision (*l*), see also title 20 United States Code section 1415(f)(3)(C) ["knew or should have known about the alleged action that forms the basis of the complaint."]. The law contains 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. (20 U.S.C. § 1415(f)(3)(D)(i) and (ii); Ed. Code, § 56505, subds. (l)(1) and (l)(2).) The Ninth Circuit recently reaffirmed this rule. (*Avila v. Spokane School Dist. 81* (2017) 852 F.3d 936.) Therefore, the statute of limitations for due process complaints in California precludes claims that occurred more than two years prior to the date of filing the request for due process unless one or both of the exceptions in Education Code section 56505, subdivisions (l)(1) or (l)(2) are found to be applicable. Cal. Educ.Code § 56505(l); 20 U.S.C. § 1415(f)(3)(c). (*M.M. v. Lafayette School District* (9th Cir. 2014) 767 F.3d 842, 309.)

DISCUSSION

Each school district filed a single pleading claiming to be a motion to dismiss and a notice of insufficiency. Student attended school in the Elementary District until the end of

the 2016-2017 school year when she completed sixth grade, and makes claims for acts and omissions of the Elementary District which occurred over a period of several years. Student was to enter middle school, which is part of the High School District, at the beginning of the 2017-2018 school year, and Student claims the High School District denied her a FAPE during that school year.

Elementary District's Notice of Insufficiency

The Elementary District first asks that all claims be dismissed for acts or omissions occurring more than two years before the complaint was filed, and the bulk of Student's claims are for that time period. The Elementary District claims that Student does not provide facts that the elementary school made misrepresentations, or withheld information in relation to these claims, that prevented her from filing a timely complaint regarding these acts or omissions.

In regards to the request to extend the two-year statute of limitations, it is found that the complaint is insufficiently plead because it is ambiguous. On page three of the 66-page complaint, Student states that claims against the Elementary District are for "the time-period that began two years prior to the date of the filing of this Complaint and ended when [she] matriculated to Seventh Grade and entered the [High School District]." However, on page 34 of the complaint, and many pages thereafter, Student argues that the two-year statute of limitations should be extended in this case. Student makes multiple claims related to the Elementary District. Student claims it refused to assess Student when Parents requested assessment, failed to meet child find obligations when Student presented as a child with disabilities, failed to find Student eligible for special education when she was assessed in 2014, and committed various procedural violations when it failed to send Parents prior written notice on many occasions when it was required to do so.

Student states facts which, if found true, would support claims that the Elementary District violated the Individuals with Disabilities Education Act and denied Student a FAPE during the time period more than two years before the filing of the complaint. However, Student does not provide facts in the complaint which, if found true, might cause the statute of limitations to be extended beyond two years to cover these claims. In addition, Student is ambiguous about whether she is making claims for the time period preceding the two-year statute of limitations because she clearly states on page 3 that she is not doing so. Therefore, the Elementary District has not been given sufficient notice of facts to know how to prepare for the hearing and how to participate in resolution sessions and mediation. Without this notice, the Elementary District cannot prepare to defend against these claims. Therefore, in regards to claims for events that occurred more than two years before the complaint was filed, the complaint is insufficiently pled.

Following the discussion of claims preceding the two-year statute of limitations in the notice of insufficiency, the Elementary District then proceeds to argue that the remaining claims against it also be found to be insufficiently plead. The first such claim is called Subissue 1 by the Elementary District, and this is a claim that it failed to comply

with all legal requirements when it assessed Student in the spring of 2017, because it failed to conduct adequate assessments, and failed to assess her in all areas of suspected disability. Student asks for independent educational evaluations. This claim is sufficiently plead. There is a description of why Student believes assessments were inadequate, and further there are statements regarding assessments Student believes should have been conducted, but were not. The Elementary District disputes the claim that inadequate assessments were conducted and believes Student was assessed in all areas of suspected disability. However, this simply shows that there is a factual dispute between the parties that needs to be addressed in a due process hearing; it does not show the issue is insufficiently pled. Subissue 1 is sufficiently plead, and there are no grounds to dismiss this issue.

The Elementary District than asks that the claim it refers to as Subissue 2 also be found to be insufficiently pled and dismissed. This is a claim that the Elementary District failed to comply with child find obligations during the period of time prior assessing Student in the spring of 2017, which is not barred by the statute of limitations. Again, Student states facts in the complaint which, if found true, would support the claim. Again, the fact that the Elementary District disputes these facts does not mean Subissue 2 is insufficiently pled, and it is found that it is sufficiently pled.

The Elementary District then moves to dismiss the claim it refers to as Subissue 3, which is a claim that the Elementary School's individualized education program offer in April 2017 denied her a FAPE. Again, Student states facts in the complaint which, if found true, would support the claim. Again, the fact that the Elementary District disputes these facts does not mean Subissue 3 is insufficiently pled, and it is found that it is sufficiently pled.

Finally, the Elementary District moves to dismiss a claim it refers to as Subissue 4, a claim that the Elementary District failed to provide Parents with prior written notices when it was required to do so during the time period within the two-year statute of limitations. The Elementary District disputes this claim, and believes it provided Parents with proper prior written notices. The fact that this claim is disputed by the Elementary District does not mean it was insufficiently pled. Subissue 4 is sufficiently pled.

The High School District's Notice of Insufficiency

The sole claim against the High School District is that it denied Student a FAPE when it failed to provide her with an interim placement when she became its student, failed to offer her any placement, and failed convene an IEP team meeting and make a clear offer of a FAPE. In its notice of insufficiency the High School District claims it had no obligation towards Student because she never attended a school in the district, disenrolled from the district on the first day of the 2017-2018 school year, and enrolled in a nonpublic school in another school district for the school year.

Student alleges in her complaint that Parents presented the High School District with the IEP developed by the Elementary District in the spring of 2017, and asked that it be

implemented. However, Student does not provide any other information about what occurred after that. She makes the conclusory statement that the High School District "failed to implement . . . [the] IEP on an interim basis and failed to make her any offer of placement, let alone a 'formal written IEP offer of placement,' as required by the IDEA, *at any time she has resided in the High S.D.*" (Emphasis in the original.) However, Student does not provide any facts at all to support these contentions in either the initial statement of facts in the complaint, or in the paragraphs that follow the statement of the issue. Accordingly, the complaint is insufficiently pled in regards to this issue, although not for the reason stated by the High School District in the notice of insufficiency.

ORDER

1. Student's complaint is insufficiently pled under title 20 U.S.C. section 1415(b)(7)(A)(ii) in regards to all claims against the Elementary District that occurred before November 10, 2016.

2. All remaining issues against the Elementary District are sufficiently pled.

3, Student's complaint is insufficiently plead as to the claims against the High School District under title 20 U.S.C. section 1415(b)(7)(A)(ii).

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

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on the claims against the Elementary District that occurred after November 9, 2016. The prehearing conference, and hearing dates in this matter are confirmed as to the Elementary District.

DATE: November 28, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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