BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, CALIBER BETA CHARTER SCHOOL, AND EL DORADO COUNTY CHARTER SPECIAL EDUCATION LOCAL PLAN AREA.	OAH Case No. 2019050586 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AS TO CALIBER BETA CHARTER SCHOOL; ORDER DENYING MOTION TO DISMISS AS MOOT

On May 8, 2019, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming West Contra Costa Unified School District, Caliber Beta Charter School, and El Dorado County Charter Special Education Local Plan Area.

On May 20, 2019, Caliber Beta filed a timely Notice of Insufficiency as to Student's complaint as it relates to Caliber Beta and moved to be dismissed as a party.[2]

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).

[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).

[2] On May 20, 2019, El Dorado County Charter SELPA filed a timely Notice of Insufficiency as to Student's complaint as it relates to El Dorado County Charter SELPA and moved to be dismissed as a party. On May 22, 2019, Student filed a notice of dismissal of El Dorado County Charter SELPA as a party to the complaint. Therefore, El Dorado County Charter SELPA's motion is moot.

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 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 Sch. Dist. 81* (9th Cir. 2017) 852 F.3d 936, a district court dismissed as beyond the IDEA's two-year statute of limitations, parents' claim that a school district had failed to determine their child's disability or assess him for autism in 2006 and 2007. Parents did not file for due process until April 2010. (*Id.* at pp. 937-938.) The Ninth Circuit reversed, holding in a case of first impression, that the claim could only be dismissed if the action was filed more than two years after the time parents "knew or should have known" about the actions forming the basis for their complaint. (*Id.* at pp. 937, 945.) It held that, in the IDEA's statute of limitations provision, Congress intended to enact a "discovery rule," not an "occurrence rule," and remanded so that the district court could determine when parents "knew or should have known" about the alleged action that formed the basis for their complaint. (*Id.* at pp. 939-945.)

DISCUSSION

Caliber Beta contends that Student's complaint fails to allege facts establishing an exception to the two-year statute of limitations that would extend Student's claims against it beyond May 9, 2017, two years from the date the complaint was filed. Caliber Beta further argues that the complaint fails to describe facts as to when and how it committed any violations or denied Student a free appropriate public education within the two years prior to the filing of the complaint.

Here, Student was enrolled at Caliber Beta from September 2014 to March 2015, more than four years from the date the complaint was filed. Though the complaint alleges that West Contra Costa Unified made misrepresentations and withheld records and information from Parent as early as the 2011-2012 school year, the complaint makes no allegations of the kind against Caliber Beta. The complaint fails to allege facts establishing an exception to the two-year statute of limitations that would extend Student's claims against Caliber Beta beyond May 9, 2017. Student's complaint also fails to allege sufficient facts against Caliber Beta of any alleged violations within the relevant two-year period related to the proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education to Student. The complaint fails to provide Caliber Beta with an awareness and understanding of the issues forming the basis of the complaint against it. Accordingly, the complaint is insufficiently pled against Caliber Beta.

ORDER

1. Student's complaint as it relates to Caliber Beta is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

3. 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.

4. If Student fails to file a timely amended complaint, Caliber Beta will be dismissed as a party and the hearing shall proceed against West Contra Costa Unified only.

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

5. Caliber Beta's motion to dismiss is denied as moot.

DATE: May 22, 2019

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