BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT .	OAH Case No. 2018051105 ORDER DETERMINING COMPLAINT TO BE INSUFFICIENT AS PLED

On May 24, 2018, Parent on behalf of Student filed a request for due process hearing (complaint)[1] with the Office of Administrative Hearings naming Long Beach Unified School District. On June 4, 2018, District timely filed a Notice of Insufficiency as to Student's complaint.[2]

APPLICABLE LAW

Sufficiency of Due Process Complaints

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).

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

[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] The same date, District also filed a motion to dismiss portions of Student's complaint that exceed the two-year statute of limitations. As this order finds Student's complaint to be insufficient, District's motion to dismiss is moot, and District may file a subsequent motion to dismiss if Student files an amended complaint.

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 Individuals with Disabilities Education Act was reauthorized in 2004, effective July 1, 2005. It codified a two-year statute of limitations in two sections of the IDEA: Title 20 United States Code sections 1415(b)(6)(B) and 1415(f)(3)(C). These sections, as clarified by the Code of Federal Regulations, state that a due process complaint must allege violations that occurred not more than two years before the date the parent or public agency "knew or should have known about the alleged action that forms the basis of the due process complaint. (See 34 C.F.R. § 300.507(a)(2).) However, the IDEA also gives each state the right to apply its own statute of limitations. In that case, a due process complaint must be filed in the time allowed by the respective state's statute of limitations. (*Ibid.*)

California is one of the states that developed its own statute of limitations for due process matters. California's statute of limitations states that a due process complaint must 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, section 56505, subd. (l), emphasis added.)

The federal statutes and California's statute of limitations provide that the general two-year rule does not apply to a parent if the parent was prevented from requesting the due process hearing due to either 1) specific misrepresentations by the school district that it had solved the problem forming the basis of the due process hearing request; or 2) the district withheld information from the parent that was required to be provided to the parent. (20 U.S.C. § 1415(f)(3)(D); Ed.Code, section 56505, subd.(l)(1) and (2).)

In *Avila v. Spokane Sch. Dist. 81* (9th Cir. 2017) 852 F.3d 986 (*Avila*), the Ninth Circuit Court of Appeals applied the federal statute of limitations to the case in determining that the two years began to run when the parents knew, or should have known, of when the

injury occurred. The Court applied federal law because the State of Washington, where the student lived in the *Avila* case, did not have its own statute of limitations. Because California has its own statute of limitations, the analysis in *Avila* is of limited assistance in determining when a statute of limitations begins to run in California due process cases. Although both statutes look to when a party did or should have discovered a violation may have occurred, California's statute of limitations focuses on when a parent learns of the injury that gives rise to an allegation that due process has been violated. (See, *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 affd. in part & revd. in part (9th Cir. 2014) 767 F.3d 842; *Alexopulous v. San Francisco Unified School Dist.* (9th Cir. 1987) 817 F.2d 551, 555.) Therefore, under California's statute of limitations, the two years begins to run when a parent becomes aware of the facts that would support an allegation that due process has been violated, not when the parent determined that a district's actions were legally wrong.

DISCUSSION

Student's complaint contains 16 issues or problems. For all allegations, Student makes a broad contention, without providing a single supporting fact, that Parents did not become aware of the facts supporting any allegation until the two years immediately prior to Student's filing of his complaint. Student's complaint then specifically raises issues potentially going back as far as 2009, when he turned three years old. Generally, Student contends that District first failed to meet its child find obligation to him and then, as of February 6, 2014, failed to offer him a free appropriate public education in his successive individualized education programs for a variety of reasons.

Student's issues 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, all raise allegations outside the applicable two-year statute of limitations. Student provides absolutely no facts to support extending the two-year statute. There are no facts that would support applying one of the two statutory exceptions to any of these 10 issues. Nor does Student state any facts to support his contention that Parent did not become aware of the facts underlying the allegations until some unstated time during the two years prior to the filing of the complaint, although Student apparently has had an IEP since February 2014. The lack of any supporting details is even more glaring in light of the potential nine-year period covered by Student's allegations. District is entitled to know the basis of Student's allegations and exactly against what it needs to defend. For these reasons, Student's allegations concerning any period prior to May 24, 2016, are insufficiently pled.

With regard to problems 1, 2, 3, 5, 6, 8, 9, 11, 12, 14, and 15 of Student's complaint, all are insufficient as Student has failed to provide a single fact in support of any allegations in these problems. Rather, Student makes identical assertions for multiple school years and IEPs, such as "Although Student demonstrated maladaptive behaviors and difficulty with social interactions he was not offered appropriate behavior services" (problems 2, 5, 8, 11, and 14). However, Student provides not a single fact in support of any assertion. Respondent has no means of determining how, when, and why it failed to meet Student's needs. For these reasons, issues 1, 2, 3, 5, 6, 8, 9, 11, 12, 14, and 15 are insufficiently pled.

Issues 4, 7, 10, 13, and 16 identically allege for each respective IEP identified that "District committed a procedural violation which denied parents the right to meaningful participation in the IEP process and deprived Student of educational opportunity. The District failed to have in attendance at the meeting a representative authorized to provide or supervise behavior services." There are no facts to support these issues. There is no description of what type of behaviors Student had that required intervention by District, or when and under what circumstances the behaviors manifested. There is no factual description of why a representative authorized to provide or supervise behavior services needed to attend the IEP team meetings at issue.

For these reasons, Student's complaint is insufficient in its entirety.

ORDER

1. Student's complaint 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, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

DATE: June 8, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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