BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LINDEN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021010288

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY SUFFICIENT

FEBRUARY 03, 2021

On January 11, 2021, 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 Linden Unified School District. On January 26, 2021, Linden Unified School District filed a Notice of Insufficiency as to the complaint.

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.)

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.

Consequently, both federal and California law contain a two-year statute of limitations for special education administrative actions that requires a finding of when the parent knew of the facts which form 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.

California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action, i.e., when the parent knows that the education provided 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 that would support a legal claim, not earlier, when the act occurred, and not later, when a party learns that it has a legal claim. (*M.M.* at *18).

It does not matter if the parent understood that the inadequacy was a legal claim, just that parents had knowledge of the problem. Congress intended to obtain timely and appropriate education for special needs children. Congress did not intend to

authorize the filing of claims for a denial of a free appropriate public education, or FAPE, many years after the alleged wrongdoing occurred. (*Alexopulous v. San Francisco Unified School Dist.* (9th Cir. 1987) 817 F.2d 551, 556.)

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

An individualized education program for a disabled child is measured at the time that it was created. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Tracy N. v. Dept. of Educ., State of Hawaii* (D.Hawaii 2010) 715 F.Supp.2d 1093, 1112.) This evaluation standard is known as the "snapshot rule." (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 439.) A parent may not bring a due process claim challenging the appropriateness of an IEP that was created outside the statute of limitations, as special education law does not recognize the doctrine of continuing violations as an exception to the two-year statute of limitations. (See *J.L. v. Ambridge Area School Dist.* (W.D.Pa. 2008) 622 F.Supp.2d 257, 268-269; *E.F. v. Newport Mesa Unified School Dist.* (C.D. Cal., June 23, 2015, No. SACV 14–00455–CJC(RNBx)) 2015 WL 3867982, *8, fn. 6).)

DISCUSSION

Student's complaint alleges eight issues, many with multiple problems listed with support. The issues are discussed below.

Issue One alleges that Linden Unified School District denied Student a FAPE by failing to timely produce educational records during the 2020-2021 school year.

Issue One is sufficiently pled to inform Linden Unified School District of the nature of the claim.

Issue Two alleges that Linden Unified School District failed to timely identify Student as a student with a disability in violation of its child find obligation. The complaint alleges Linden Unified School District had reason to suspect Student was a student with a disability as early as the 2014-2015 school year. Issue Two is sufficiently pled.

Issues Three, Four, Five, Six, Seven and Eight allege Linden Unified School District denied Student a FAPE for the 2014-2015 through 2020-2021 school years by failing to provide educational records; timely conduct comprehensive assessments of Student; offer Student appropriate and measurable annual goals, offer Student a FAPE, provide means for implementing Student's individualized education program; offer an appropriate placement, supports and services for Student; and offer Student appropriate accommodations.

Student alleges throughout the complaint, and more particularly at paragraphs 28 through 51, that Linden Unified School District negligently or intentionally made misrepresentations to Student's Parents sufficient to obtain relief for claims arising outside the two-year statute of limitations. The complaint seeks a determination that Linden Unified School District denied Student a FAPE for the 2014-2015 through 2020-2021 school years, as well as seeks a resolution to cover this time period.

Student's complaint alleges that Parents became aware during the 2014-2015 school year when Student was in kindergarten that he had difficulties in reading. The complaint asserts that Linden Unified School District did not advise Parents of their right to have Student assessed for special education eligibility as early as the 2014-2015

school year, and further withheld records and information from Parents. The complaint does not detail the statements or omissions, identify who might have made the statements or omissions, or state approximately when the statements or omissions were made, to give notice to Linden Unified School District to prepare its defense. The complaint does not allege specific facts that Parents were prevented from filing a request for due process due to specific misrepresentations by Linden Unified School District, or that it withheld information from Parents that was required to be provided for the time periods outside of the two-year statute of limitations. (*Fernandez v. Elk Grove Unified School Dist.* (E.D. Cal., March 31, 2020, No. 2:19-cv-00082-MCE-AC) 2020 WL 1532229, **4-5.) Therefore, Student failed to allege sufficient allegations against Linden Unified School District before January 11, 2019.

Therefore, Student's Issues Three, Four, Five, Six, Seven and Eight are insufficiently pled for failure to state sufficient facts as to alleged violations before January 11, 2019.

ORDER

1. Issues One and Two of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issues Three, Four, Five, Six, Seven and Eight are insufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to events that occurred before January 11, 2019.
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 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 Issues One and Two, and allegations in Issues Three, Four, Five, Six, Seven and Eight on or after January 11, 2019, in Student's complaint.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings