BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017100090 ORDER DETERMINING DUE PROCESS COMPLAINT TO BE PARTIALLY INSUFFICIENT

On September 28, 2017, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Oakland Unified School District. On October 20, 2017, District filed a Notice of Insufficiency, and in the alternative, a Motion to Dismiss. District sought to dismiss Student's claims barred by the two-year statute of limitations. On October 25, 2017, Student filed an opposition to District's motion.

In an order dated October 26, 2017, OAH found Student's complaint deficient as to allegations raised beyond the applicable two-year statute of limitations. OAH found that Student failed to state allegations that would toll the statute. OAH gave Student leave to file an amended complaint.

Student filed an amended complaint on October 30, 2017. On October 31, 2017, District filed a renewed notice of insufficiency.

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).

[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).

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. § 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 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 amended complaint provides no additional facts that support extending California's two-year statute of limitations. The 24 paragraphs composing the "Brief Summary of Facts" in Student's amended complaint are identical to the facts in Student's original complaint, which OAH has already found insufficient to support a tolling of the statute of limitations. Student's amended complaint adds a few paragraphs to the "Legal Issues" section of his complaint, but none of what he states as legal issues provides facts that would support tolling the statute of limitations.

Student's amended complaint now cites to *M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189[2] (*M.C.*). However, Student cites to *M.C.* for the proposition that a district must make a written, formal offer of a free appropriate public education. He then adds a new, legal contention that District failed to make a written offer of FAPE.

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2 Student provides an incorrect citation to the *M.C.* case. The Ninth Circuit amended its decision and re-issued it on May 30, 2017.

However, Student failed to state any facts in support of this allegation, in particular when and in which IEP this occurred. Further, even assuming Student is referencing an IEP that was developed prior to September 28, 2015, two years prior to the filing of his instant due process complaint, he fails to state any facts that indicate that Parent did not know or could not have known that there was no written, formal offer of FAPE.

Student's amended complaint suffers from the same deficiencies as his original complaint. He provides no facts that would support an application of either of the exceptions to the California's two-year statute of limitations. Significantly, none of the facts, which he re-alleges verbatim from his original complaint, give any support for his contention that Parent did not know that the violations had occurred. For example, to the extent that Student contends that District failed to give Parent a copy of procedural safeguards at any of the IEP team meetings that occurred prior to September 28, 2015, Student fails to state facts as to why Parent would not have been aware that she did not receive them at the time District was required to give the procedural safeguards to her. Either she received them or she did not.

Additionally, Student was found eligible for special education in 2011 by another district. Student does not allege that the prior district failed to give Parent copies of her procedural safeguards during the time it developed IEPs and convened IEP team meetings for Student. Parent therefore was aware of her procedural rights as early as 2011. Nor does Student contend that District failed to give her a copy of procedural safeguards at least once a year between at least May 9, 2013 and September 28, 2015. The facts as alleged by Student therefore demonstrate that Parent received procedural safeguards from two school districts a significant amount of time prior to September 28, 2015. The facts as alleged by Student demonstrate that Parent was aware of her procedural rights and aware that District allegedly failed to meet all its obligations to Student, yet Student did not file for due process.

Student has therefore failed to cure the deficiencies of his original complaint. Student's amended complaint is insufficient as to any allegation of a violation prior to September 28, 2015. His amended complaint fails to provide District with an awareness and understanding of the issues forming the basis of the complaint as to claims occurring prior to that date, and is thus insufficient as to any claim outside of California's two-year statute of limitations.

District contends that Student should not be permitted to again amend his complaint because Student was given an opportunity to cure the insufficient facts supporting a tolling of the statute of limitations, but has been unable to do so. District does not provide any support for its contention. Student will be given another opportunity to amend. However, Student is cautioned that if he cannot factually support a tolling of the statute of limitations in a new amended complaint, he may not be permitted yet another attempt to amend.

ORDER

1. Student's first amended complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to claims occurring prior to September 28, 2015.

2. Student shall be permitted to file a second 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 United States Code 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 matter will proceed as scheduled as to the remaining issues that occurred on or after September 28, 2015.

DATE: November 3, 2017

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.