BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT AND LARCHMONT CHARTER SCHOOL.

OAH CASE NUMBER 2023090620

ORDER DETERMINING COMPLAINT INSUFFICIENT IN PART

OCTOBER 4, 2023

On September 18, 2023, Parents on behalf of Student, filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH, naming Los Angeles Unified School District and Larchmont Charter School. On October 2, 2023, Larchmont Charter filed a notice of insufficiency as to the complaint.

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).

LARCHMONT CHARTER FILED A TIMELY NOTICE OF INSUFFIIENCY

The complaint is deemed sufficient unless a party notifies OAH 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).) Larchmont Charter filed its notice of insufficiency within 15 days of receiving the complaint. Thus, Larchmont Charter timely filed a notice of insufficiency.

STUDENT'S COMPLAINT IS INSUFFICIENT IN PART

Larchmont Charter contends that Student's complaint is insufficient because: Student failed to:

- plead sufficient facts regarding the statute of limitations;
- identify how Larchmont Charter was responsible for the proposed resolutions; and,
- plead consistent allegations and facts.

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.)

STUDENT'S ISSUES ALLEGED AGAINST LARCHMONT CHARTER ARE INSUFFICIENT IN PART.

Student's complaint alleges sixteen issues, seven of the sixteen issues are alleged against Larchmont Charter. Six of Student's seven issues alleged against Larchmont Charter are insufficiently pled.

Student filed the complaint on September 18, 2023, and thus the applicable statute of limitations began on September 18, 2021. Student's issues against Larchmont Charter, are listed in paragraphs 114, 115, 116, 117, 118, 119, and 120. Student's issues listed in paragraphs 114, 115, 116, 117, 118, and 119 allege violations going back to 2019.

The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445; *E.J. v. San Carlos Elementary School Dist*. (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) 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 by the local educational agency's withholding of information that was required to be provided to the parent.

In *Avila v. Spokane School District 81*, (9th Cir. 2017) 852 F.3d 936 (*Avila*), the Ninth Circuit held that the two-year statute of limitations for filing a request for due process pursuant to the Individuals with Disabilities Education Act begins when a parent "knew or should have known about the alleged action that forms the basis of the compliant." (*Avila*, at p. 944.) At that point, parents have two years to file their request for due process. (20 U.S.C. § 1415(f)(3)(C) and 1415(b)(6)(B).)

Here, Student failed to plead any facts in support of tolling the statute of limitations. Student neither alleged any exception to the statute of limitations nor the discovery rule. Larchmont Charter is left to guess upon which basis or bases Student is alleging it can toll the statute of limitations. Thus, the complaint is unclear, confusing, and insufficiently pled as to allegations against Larchmont Charter located in paragraphs 114 through 119, specially claims raised before September 18, 2021, because Student failed to give Larchmont Charter the requisite regarding the statute of limitations to allow it to adequately participate in the resolution session, mediation, and due process

hearing. Accordingly, Student's issues listed in paragraphs 114, 115, 116, 117,118, and 119, to the extent Student asserts claims before September 18, 2021, are insufficient. Student's issue against Larchmont Charter listed in paragraph 120 is sufficient.

Larchmont Charter further alleged that Student's proposed resolutions are insufficient because Student failed to delineate which proposed resolutions relate to Larchmont Charter and which ones relate to Los Angeles making them confusing and overbroad. A complaint is required to included proposed remedies to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student requested in the proposed remedies independent education evaluations in speech and language and occupational therapy; and reimbursement for a neuropsychological evaluation, related services, and the cost to attend a private school. Student has met the statutorily required standard of stating a resolution to the extent known and available at the time the complaint was filed.

Larchmont Charter also argued that other portions of Student's complaint are inconsistent and confusing. Upon review of the Student's complaint, the undersigned it not persuaded by these arguments.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to its allegations against Larchmont Charter located in paragraphs 114, 115, 116, 117, 118, and 119 of Student's complaint that allege violations before September 21, 2021.
2. Student's complaint is sufficiently pled under title 20 U.S.C. section 1415(b)(7)(A)(ii) as to its allegation against Larchmont Charter located in paragraph 120 of Student's complaint and Student's proposed resolutions.

3. Student is permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. The amended complaint must comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii) and must be filed not later than 14 days from the date of this order. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
5. If Student fails to file a timely amended complaint, the hearing will proceed as to Los Angeles Unified School District and as to the allegations against Larchmont Charter in paragraphs 114, 115, 116, 117, 118, and 119 after September 18, 2021, and as to the allegation in paragraph 120 of Student's complaint.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings