BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019110017

ORDER DETERMINING STUDENT'S ISSUE TWO PARTIALLY SUFFICIENT

On October 31, 2019, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming South Pasadena Unified School District. On November 15, 2019, South Pasadena 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.)

DISCUSSION

Student's complaint alleges four claims. South Pasadena challenges the sufficiency of Student's second claim, that it denied Student a free appropriate public education by failing to conduct a psychoeducational assessment for Student pursuant to Parent's August 2016 request. South Pasadena alleges this claim is insufficient because Student fails to allege any facts related to an exception to the two-year statute of

limitations. Student alleges Parent requested an assessment for special education in August of 2016 and South Pasadena denied the request. Student alleges South Pasadena instead created a 504 Plan for him but did not assess for special education until February 12, 2019. Student alleges sufficient facts in the complaint for South Pasadena to respond to the allegation of an alleged failure to assess, however, Student does not allege any facts related to an exception to the two-year statute of limitations. (Ed. Code, § 56505(l); 20 U.S.C. § 1415(f)(3)(d); *M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012 Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, *18, aff'd by *M.M. v. Lafayette School Dist.* (9th Cir. 2014) 767 F. 3d 842.) Therefore, Student's second claim is limited to the time period of October 31, 2017, to October 31, 2019.

ORDER

1. Issues One, Three, and Four of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue Two of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to the time period prior to October 31, 2017.
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II) if he intended to plead an exception to the two-year statute of limitations.
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. 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 shall proceed only on Issues One, Three, and Four of Student's complaint and Issue Two from October 31, 2017, to October 31, 2019.

IT IS SO ORDERED.



DATED: November 18, 2019

Linda Johnson
Administrative Law Judge
Office of Administrative Hearings