BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MATEO FOSTER CITY SCHOOL DISTRICT.

OAH CASE NUMBER 2022090812

ORDER DETERMINING SUFFICIENCY OF DUE PROCESS COMPLAINT

OCTOBER 6, 2022

On September 26, 2022, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming San Mateo-Foster City School District. On October 5, 2022, San Mateo-Foster City 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).) There are limited exceptions to the general statute of limitations. For example, when parent was prevented from filing a request for due process due to specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint, or that the local education agency withheld information from the parent that it was required to provide. (Ed. Code § 56505, subd. (l), tit. 20 U.S.C. section 1415(f)(3)(D).) Additionally, as permitted under federal law, California has adopted its own discovery rule. California's law states that a claim accrues for purposes of the statute of limitations when a parent learns of the underlying facts that form a basis for the action. (Ed. Code, § 56505, subd. (l).)

DISCUSSION

In the complaint, Student alleges four claims related to four individualized educational programs, called IEPs. Some of Student's claims are sufficient and some are insufficient. Student's Issue One alleges denial of a free appropriate public education, referred to as FAPE, related to the November 6, 2019 IEP. San Mateo-Foster City contends the complaint lacks details that would support extending the two-year statute of limitations. San Mateo-Foster City argues that Student's Issue One appears to raise claims outside the statutory period without stating an exception to the statute of limitations.

As pled, Student's Issue One raises claims beginning November 6, 2019, including claims that arose prior to the two-year statute of limitations of September 26, 2020. Student has failed to plead the basis upon which Student seeks an exception to the two-year statute of limitations. As a result, Student's Issue One is insufficiently pled to include a basis to extend the statute of limitations. This prevents San Mateo-Foster City

from knowing how to respond to Student's complaint, participate in resolution session, and mediation.

Student's Issues Two, Three, and Four allege denials of FAPE based on November 5, 2020, November 30, 2021, and March 24, 2022 IEP's, respectively. Student's proposed resolution asserts a request for reimbursement to Parents for all tuition and mileage expenses incurred from Fusion Academy though August 10, 2022. San Mateo-Foster City does not allege insufficiency related to Issues Two and Three. Student's Issue Two and Three are sufficiently pled.

San Mateo-Foster City contends that it unclear whether Student has placed the 2022-2023 school year at issue. San Mateo-Foster City states that the proposed resolution requests reimbursement though August 10, 2022, the day before the beginning of the 2022-2023 school year. Student's Issue Four alleging a denial of FAPE based upon the March 24, 2022 IEP may be interpreted to raise issues during the 2022-2023 school year, through September 26, 2022, the date the complaint was filed. But reading Student's proposed resolution that requests remedies through the day before the 2020-2023 school year began, in conjunction with Issue Four, establishes that Student's allegation in Issue Four relates to the time period up to the day before the beginning of the 2022-2023 school year. Accordingly, Student's Issue Four is pled sufficiently.

Student's Issues Two, Three, and Four are sufficiently pled to put San Mateo-Foster City on notice as to the basis of Student's claims. With regard to Issue One, Student fails allege an exception to the statute of limitations for claims arising prior to September 26, 2020. Therefore, for Issue One, any claims that arose before September 26, 2020, are insufficiently pled.

A parent without an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues Two, Three, and Four of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Claims in Issue One arising before September 26, 2020, are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
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. 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 Issue One related to claims arising on or after September 26, 2020, and Issues Two, Three, and Four in Student's complaint.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings