BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018070534
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
ORANGE UNIFIED SCHOOL DISTRICT.	

On July 12, 2018, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Orange Unified School District. On July 23, 2018, Orange Unified filed a Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW

Sufficiency of the Complaint

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).

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,

[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).

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 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).) Education Code section 56505, subdivision (l) provides as follows: "A request for due process hearing arising under subdivision (a) of Section 56501 shall 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. In accordance with Section 1415(f)(3)(D) of title 20 of the United States Code, the time period specified in this subdivision does not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following: (1) Specific misrepresentation by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or (2) The withholding of information by the local educational agency from the parent that was required under this part to be provided to the parent."

A claim under the Individuals with Disabilities Education Act accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action; that is, when the parent knows that the education provided is inadequate. (*M.D. v. Southington Bd. of Ed.* (2d Cir. 2003) 334 F.3d 217, 221.) In other words, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that he or she has a legal claim. (See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1032, 1039.) In *Miller v. San Mateo-Foster City Unified School District* (N.D.Cal. 2004) 318 F.Supp.2d 851, 860, the court held the cause of action accrued when parents received notice of their procedural rights in connection with a school district's assessment of their child, even if the assessment's findings were later found to be incorrect.

DISCUSSION

Orange Unified's NOI contends Student's complaint is confusing as the sole issue for hearing as written alleges violations throughout the "statutory period," yet raises alleged violations extending beyond the two-year statute of limitations. However, in construing the complaint liberally, the complaint provides Orange Unified with an awareness and

understanding as to the issues forming the basis of the complaint, including claims beyond the two-year statute of limitations. Student's complaint provides a discussion regarding the two-year statute of limitations, and dedicates a significant portion of the complaint discussing alleged violations occurring prior to the two-year statute of limitations. The complaint further alleges that Student failed to make progress during the "statutory period and prior."

In addition, the complaint clearly asserts an exception to the two-year statute of limitations, claiming District withheld information from Parent that she was entitled to. The compliant argues Parent was only recently provided her procedural safeguards and rights, plainly indicating that at no point prior to that recent receipt and prior to the two-year statute of limitations, did Orange Unified provide Parent with her procedural safeguards and rights. Furthermore, the use of the term "statutory period" in the complaint's issue statement does not render the complaint wholly confusing as to the time period at issue. The complaint identifies the issues and adequate related facts about the problems, including problems extending beyond the two-year statute of limitations, to permit Orange Unified to respond to the complaint and participate in a resolution session. Accordingly, Student' complaint is sufficient.

Among Student's proposed resolutions are requests for evaluations in the areas of occupational therapy, adapted physical education, and educationally related mental health services; and services to include social skills training and educationally related mental health services. Student further requests compensatory education in the areas of academics, occupational therapy, adapted physical education, speech and language, and counseling. A complaint is required to include proposed resolutions 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).) The proposed resolutions stated in Student's complaint are sufficiently defined and meet the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. The prehearing conference and hearing dates in this matter are confirmed.

DATE: July 24, 2018

DocuSigned by:
Rommel P. Cruz
ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings