BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LINDEN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021010288

ORDER GRANTING REQUEST FOR RECONSIDERATION

FEBRUARY 12, 2021

On February 3, 2021, the undersigned Administrative Law Judge issued an order determining partial sufficiency of due process complaint. On February 11, 2021, Linden Unified School District filed a motion for reconsideration as to Issue 2 in Student's complaint. Student filed an opposition on February 11, 2021. Linden Unified School District filed a reply to Student's opposition on February 11, 2021.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking

reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

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).) However, 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 the local educational agency's withholding of information from the parent that was required to be provided to the parent.

DISCUSSION

The February 3, 2021 order found that Issue Two of Student's complaint was sufficiently pled. Linden Unified School District argues that Issue 2 should be limited to alleged child find violations arising within the two-year statute of limitations. Student argues that Linden Unified School District's motion for reconsideration is an attempt to obtain summary judgment.

This order addresses the sufficiency of Student's pleading. Student failed to allege specific facts that Parent was prevented from filing a request for due process because of specific misrepresentations by Linden Unified School District, or that it withheld information from Parent that was required to be provided for the time periods outside of the two-year statute of limitations. (*Fernandez v. Elk Grove Unified School Dist.* (E.D. Cal., March 31, 2020, No. 2:19-cv-00082-MCE-AC) 2020 WL 1532229, **4-5.) Student did not allege sufficient allegations against Linden Unified School District to fall

within either exception to the two-year statute of limitations. Linden's Unified School District's request is not a summary judgment motion as the analysis here is whether Student pled sufficient facts to pierce the two year statute of limitations, which Student did not. Therefore, Student's child-find allegations alleged in Issue Two and its subparts, and any related resolution, are limited to allegations after January 11, 2019. At the due process hearing in this matter, Student may refer to facts that occurred prior to January 11, 2019, for the purpose of establishing Linden Unified School District was on notice of Student's potential eligibility for special education as of January 11, 2019.

ORDER

1. On reconsideration, Linden Unified School District's motion for reconsideration is granted.
2. Issues One and Two of Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii). Student's Issue 2 is limited to events that occurred after January 11, 2019.
3. Issues Three, Four, Five, Six, Seven and Eight are insufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to events that occurred before January 11, 2019.
4. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
5. 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.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue One, and allegations in Issues Two, Three, Four, Five, Six, Seven and Eight on or after January 11, 2019, in Student's complaint.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings