BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024060732

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY INSUFFICIENT

JULY 5, 2024

On June 20, 2024, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Norwalk-La Mirada Unified School District. On July 3, 2024, Norwalk-La Mirada filed a Notice of Insufficiency as to the complaint regarding only Issues 1 and 4.

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 Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Board* (M.D.Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Board 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 46540-46541, 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).) 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.

California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action. That is, the claim accrues when the parent knows that the education provided is inadequate, and not when the parent understands a claim occurred. (*M.M. & E.M. v. Lafayette School Dist*. (N.D.Cal., Feb. 7, 2012 Nos. CV 09– 4624, 10–04223 SI) 2012 WL 398773, ** 17 – 19, affd.in part and revd. in part on other grounds by *M.M. v. Lafayette School Dist.*, et al (9th Cir. 2014) 767 F.3d 842, 859.)

It does not matter if the parent understood that the inadequacy was a legal claim, what is material is the fact that the parent had knowledge of the problem. Congress intended to obtain timely and appropriate education for special-needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Student v. Brea Olinda Unified School Dist*. OAH Case No. 2009050815, quoting *Alexopulous v. San Francisco Unified School Dist*. (9th Cir. 1987) 817 F.2d 551, 555.)

Student's complaint was filed on June 20, 2024. Claims arising before June 20, 2022, are barred unless an exception to the statute of limitations applies.

Student alleges four claims in her complaint. However, Norwalk-La Mirada only challenges the sufficiency of Student's Issues 1 and 4.

Student's Issue 1 alleges Norwalk-La Mirada denied Student a free appropriate public education, called FAPE, by determining Student is ineligible for special education "under at least" specific learning disability, "as well as other eligibilities." Student alleges facts regarding initial eligibility assessments and an individualized education program team meeting in December 2021 at which it was determined that Student was not eligible for special education and related services. An individualized education program is called an IEP. The complaint does not allege facts regarding an exception to the statute of limitations to support a claim at Issue 1 challenging Norwalk-La Mirada's determination Student did not qualify for special education and related services before June 20, 2022.

Student alleges two independent educational evaluations were conducted in July 2022, and sometime before January 2023, that were reviewed by IEP team meetings held on November 18, 2022, and January 10, 2023, respectively, which are within the statutory period. Student alleges after the IEP team reviewed those independent evaluations, Norwalk-La Mirada "refused to find [Student] eligible," and Norwalk-La Mirada continued to conclude Student did not qualify for special education and related services under any eligibility category, despite findings in the independent evaluations that Student had processing problems contributing to Student's difficulties at school. The complaint alleges sufficient information to give Norwalk-La Mirada an awareness and understanding of the issues forming the basis of Issue 1, as to claims arising on or after June 20, 2022.

Student's Issue 4 alleges Norwalk-La Mirada "deprive[d] [Student] of instruction and impede[d] her education by intentionally or with gross negligence subjecting her to

an unsafe and hostile environment." Student asserts this occurred on and after December 1, 2022, "by illegally suspending [Student] and causing her to lose instructional time, den[ying] [Student] a 'safe placement supportive of learning,' illegally excluding her from the campus and denying her the opportunity to learn when she was there." Student's additional factual assertions are that she "lost instructional time through the illegal suspension, and through bullying orchestrated by the Hutchinson [Middle School] administration that subjected her to a hostile environment" and also "lost several other days of school due to the resulting emotional distress and the need to seek medical attention caused by it." Student contends "[t]his deprived [her] of educational benefits, prevented her from getting a FAPE, and significantly infringed on parent participation in enforcing the IEP," although Student did not have an IEP because Norwalk-La Mirada determined Student was not eligible for special education and related services.

Student's Issue 4 intimates claims over which OAH does not have jurisdiction, such as personal injury or violation of other civil rights statutes, like section 504 of the Rehabilitation Act of 1973. A party has the right to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a)), and the jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Further, if Student ultimately is determined to be a student who does not qualify for special education and related services, she cannot be said to have been denied a FAPE under the IDEA. [(*R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 942; see *D.G. v. Flour Bluff Independent School Dist.* (5th Cir. 2012) 481 Fed. Appx. 887, 893, 2012 WL 1992302 [nonpub. opn.] ["IDEA does not penalize school districts for not timely evaluating students who do not need special education."].) However, Student does allege

Norwalk-La Mirada's conduct in suspending Student and making Student so distressed that she missed days for medical care "prevented her from getting a FAPE."

A notice of insufficiency challenges whether a complaint has provided the school district with enough information to be aware of the acts or omissions a student contends caused a problem in the student's education. It does not to test the ultimate viability of a student's claim. Therefore, without deciding whether Student has stated a claim within OAH's jurisdiction, or whether Student's claim is both in fact and law a viable claim under the IDEA, it is determined that Issue 4 of the complaint identifies the issue and adequate facts about the problem to permit Norwalk-La Mirada to respond, participate in a resolution session and mediation, and prepare for a due process hearing. Issue 4 is sufficiently pleaded.

ORDER

1. Issue 1 is insufficiently pleaded under title 20 United States Code section 1415(c)(2)(D) as to claims arising before June 20, 2022.
2. Issue 1 is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii) as to claims arising on or after June 20, 2022.
3. Issue 4 is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
4. Student will be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
5. The amended complaint must comply with the requirements of title 20 United States Code 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.

6. If Student fails to file a timely amended complaint, the hearing shall proceed on Issue 1 as to claims arising on or after June 20, 2022, and Issues 2, 3, and 4.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings