BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WALNUT CREEK SCHOOL DISTRICT.

OAH CASE NUMBER 2022120375

ORDER DETERMINING ISSUE THREE OF DUE PROCESS COMPLAINT INSUFFICIENT

JANUARY 27, 2023

On December 13, 2022, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Walnut Creek School District. On December 21, 2022, Walnut Creek filed a Notice of Insufficiency as to Issue Three of Student's complaint. On December 22, 2022, OAH issued an order finding Issue Three of Student's complaint insufficient and giving Student leave to amend the complaint. On December 29, 2022, Student filed an amended complaint. On January 4, 2023, Walnut Creek filed a Notice of Insufficiency as to Issue Three of Student's amended complaint. On January 4, 2023, OAH issued an order finding Issue Three of Student's amended complaint insufficient, again giving Student leave to amend. On January 13, 2023, Student filed a second amended

complaint. On January 26, 2023, Walnut Creek filed a Notice of Insufficiency as to Issue Three of Student's second amended complaint asserting the same objections as made in the prior two notices of insufficiency.

APPLICABLE LAW

SUFFICIENCY OF DUE PROCESS COMPLAINT

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.)

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).) 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 hearing due to specific misrepresentations by the school district it had resolved the problem forming the basis of the complaint, or the school district withheld information it was required to provide to the parent.

Consequently, both federal and California law contain a two-year statute of limitations for special education administrative actions and require a finding confirming when the parent knew of the facts forming the basis of the claim. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2); Ed. Code, § 56505, subd. (l).) California, however, has adopted its own manner of applying this discovery rule.

DISCUSSION

Walnut Creek timely filed its Notice of Insufficiency as to Issue Three in Student's complaint within 15 days of receiving Student's complaint. Walnut Creek asserts the

same basis for its notice of insufficiency as in its prior two notices of insufficiency. Specifically, Walnut Creek asserts that Student failed to assert any claims or facts relating to a proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education, outside the two-year statute of limitations. Additionally, Walnut Creek asserts that Student's Issue Three merely asks OAH if Student is entitled to toll the two-year statute of limitations based on an alleged misrepresentation by Walnut Creek. Walnut Creek asserts that OAH twice determined in the two prior findings of insufficiency of Student's Issue Three, that the express language of Student's complaints failed to establish any misrepresentation supporting a tolling of the statute of limitations. Walnut Creek argues that Student again failed to cure the insufficiency of Issue Three.

Student's initial complaint was filed on December 13, 2022. The statute of limitations allows Student to assert claims as far as two years before the filing of the complaint which here, is December 13, 2020. Student's complaint contains six issues. All of Student's issues, with the exception of Issue Three, assert claims within the two-year statute of limitations, as none of those issues contain any facts specifically asserting claims prior to December 13, 2020. As such, those issues are not asserted as insufficient by Walnut Creek.

Issue Three of Student's second amended complaint states: "Is Student entitled to toll the two-year statute of limitations for the filing of special education claims pursuant to Education Code 56502, subdivision (1) because Parents were prevented from requesting a due process hearing because the District failed to complete a psycho-educational assessment during the 2019-2020 school year, including ESY, or some other date thereafter?". Issue Three of Student's original complaint and first amended complaint mirror the statement of Issue Three in Student's second amended complaint.

OAH has twice found Student's Issue Three insufficient as the express language of Student's complaint precluded Student's assertion that Student was prevented from filing for due process as the result of a misrepresentation by Walnut Creek. Student was given two opportunities to file an amended complaint, yet Student's first and second amended complaints continued to lack any issues requiring a tolling of the statute of limitations or, even if so asserted, containing facts supporting a finding of a misrepresentation by Walnut Creek causing Student to delay filing for a due process hearing, such that the statute of limitations should be tolled. Accordingly, Issue Three of Student's complaint is insufficient and is dismissed. Should Student wish to file a third amended complaint, Student must file a motion seeking to amend, as well as an amended complaint.

ORDER

1. Issue Three of Student's complaint is insufficiently pled under title 20 United States Code 1415(c)(2)(D).
2. Issue Three of Student's complaint is dismissed.
3. This matter shall proceed as scheduled on Issues One, Two, Four, Five, and Six.

IT IS SO ORDERED.

Rita Defilippis

Rita Defilippis
Administrative Law Judge
Office of Administrative Hearings