BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT AND LARCHMONT CHARTER SCHOOL.

OAH CASE NUMBER 2023090620

ORDER FINDING AMENDED DUE PROCESS COMPLAINT SUFFICIENT AGAINST LARCHMONT CHARTER SCHOOL

OCTOBER 27, 2023

On September 18, 2023, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings naming Los Angeles Unified School District and Larchmont Charter School. The Office of Administrative Hearings is called OAH. Larchmont Charter School is called Larchmont.

On October 2, 2023, Larchmont filed a notice of insufficiency as to the complaint, and on October 4, 2023, OAH issued an Order finding Student's complaint insufficient as to Larchmont because Student had not alleged exceptions to the statute of limitations on claims over two-years old.

On October 11, 2023, Student filed an amended due process complaint. On October 25, 2023, Larchmont filed a timely notice of insufficiency as to Student's amended complaint. On October 26, 2023, Student filed an opposition.

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 the Individuals with Disabilities Education Act, called IDEA, at 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, called a FAPE; (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).) 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.

The Ninth Circuit characterized the IDEA's statute of limitations statute as a discovery rule statute, rather than an occurrence rule, statute because it looks to what a party knew or should have known before filing a due process claim. (*Avila v. Spokane Sch. Dist.* 81 (9th Cir. 2017) 852 F.3d 936, 939-945.) Although California's statute of limitations is also a discovery rule statute, its wording is slightly different from that in the IDEA, and has a history of interpretation by California courts that focuses on knowledge of facts, rather than awareness of claims, upon which the due process request is based. The California statute requires that a due process request 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. (Ed. Code, § 56505, subd. (l), *M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012) 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.)

Larchmont contends Student's amended complaint is insufficient as to Larchmont because it fails to provide any factual or legal basis for extending the statute of limitations, leaving the allegations against Larchmont vague and confusing.

Student's amended complaint pleads six claims against Larchmont. Student alleges that despite Parents' repeated requests from the 2019-2020 school year through the 2022-2023 school year for additional academic, behavioral, and mental health help while Student was attending school in Larchmont, Larchmont did not assess Student for special education eligibility or inform Parents of procedural safeguards and parental rights. Student also alleges that Larchmont made misrepresentations from the 2019-2020 through 2022-2023 school years that it was addressing the problems raised by Parents with a 504 plan, when it was not doing so, and Parents eventually enrolled Student in a private school during the 2022-2023 school year.

Student's claims are not numbered, but under a heading of issues against Larchmont, Student alleges at paragraph 114 that Larchmont withheld information from Parents by failing to respond to Parent's requests with a prior written notice in Parent's native language, or to provide Parents with procedural safeguards and parent rights, from the 2019-2020 school year through the 2022-2023 school year, tolling the statute of limitations on Student's special education claims. At paragraph 115, Student alleges Larchmont denied Student a FAPE by failing in its child find obligations under the IDEA, and at paragraph 116 by failing to find Student eligible for special education, during the 2019-2020 through 2022-2023 school years. At paragraph 117, Student alleges Larchmont denied Student a FAPE from the 2019-2020 through 2022-2023 school years by not offering Student an individualized education program. At paragraph 118, Student alleges Larchmont denied Student a FAPE by failing to provide prior written notice of its refusal to assess Student in Parent's native language from September 18,

2022 through the 2022-2023 school year. At paragraph 119 Student alleges Larchmont denied Student a FAPE from September 18, 2022 through the 2022-2023 school year by not providing Parents with procedural safeguards in Parent's native language. At paragraph 120, Student alleges Larchmont denied Student a FAPE by failing to produce a complete copy of Student's educational records upon request by Parents during the 2023 extended school year and the 2023-2024 school year.

Student has alleged facts within the exception to the two-year statute of limitations on each claim reaching back further than September 18, 2021. Student has alleged specific misrepresentations by Larchmont that the 504 plan was addressing Student's educational needs, and that Larchmont withheld information from Parents that was required to be provided to them. Whether or not Parents were aware of the facts upon which Student's extended claims at paragraphs 114, 115, 116, and 117 are based requires findings of fact by the hearing officer and must be resolved at hearing.

Larchmont's notice of insufficiency relies heavily on *Student v. Modesto City Schools and Turlock Unified School District,* OAH Case No. 2019081052, but in that case a motion to dismiss claims beyond the statute of limitations was denied pending a hearing on the facts. Also in that case, the determination of whether the statute of limitations was tolled was made in a final decision after a hearing on the merits. Similarly, whether the statute of limitations will be tolled in Student's case will be decided on factual findings at hearing.

The facts alleged in Student's amended complaint are sufficient as against Larchmont. Student's amended complaint identifies the issues and adequate facts about the problem to permit Larchmont to respond and participate in a resolution session and mediation.

Therefore, Student's statement of the six claims against Larchmont is sufficient.

ORDER

1. The complaint is sufficient as against Larchmont under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings