BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ACALANES UNION HIGH SCHOOL DISTRICT AND MORAGA SCHOOL DISTRICT.	OAH Case No. 2018070440 ORDER GRANTING REQUEST FOR RECONSIDERATION; ORDER OF DETERMINATION OF PARTIAL INSUFFICIENCY OF DUE PROCESS COMPLAINT

On July 30, 2018, the undersigned Administrative Law Judge issued an order determining the sufficiency of Parent on behalf of Student's due process hearing request. On July 31, 2018, Moraga School District filed a request for reconsideration. Student timely filed an opposition.

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. (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 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).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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, *supra*, at p. 34.) 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.

DISCUSSION

Reconsideration

Student's complaint was accompanied by a proof of service declaring that it had been served on OAH, Moraga, and Acalanes Union High School District on July 10, 2018. On July 27, 2018, Moraga submitted a notice of insufficiency, which was more than 15 days after Student's complaint was served. Because Moraga's notice of insufficiency was not filed within the statutorily required timeline, OAH determined that Student's complaint was sufficient.

In its request for reconsideration, Moraga alleges new facts. Specifically, Moraga alleges that it received the cover page of Student's complaint on July 10, 2018, but was not served the complaint until July 12, 2018. Moraga provided supporting documentation and a declaration in support of its request. In Student's opposition, she admits that Moraga was served the complaint on July 12, 2018. Consequently, Moraga filed its notice of insufficiency within the statutorily required timeline.

Moraga's request is timely and provides sufficient facts to warrant reconsideration. Accordingly, Moraga's request for reconsideration is granted.

Notice of Insufficiency

Upon reconsideration, Moraga requests that OAH determine that Student's issues two and three were insufficiently pled.

Student's issue two alleges that Moraga denied her a free appropriate public education by failing to provide her special education and related services and develop and implement an individualized education program, for Student to receive appropriate special education support and services. Student's issue is vague and fails to describe what services or IEPs are in dispute, or the timeframe for the claim. While there are many facts pled in Student's complaint, it is unclear which facts correlate to issue two. Therefore, Student's issue two is insufficiently pled.

Student's issue three alleges that Moraga violated its child find obligations by failing to locate, identify, and evaluate Student while she was placed at a private school located in Moraga's boundaries, during the 2013-2014 and 2014-2015 school years. The complaint alleges that Student required special education during that time, but Moraga failed to respond to Parent's request for assistance and withheld procedural safeguards. Although issue three predates the two year statute of limitations, the complaint sufficiently raises a factual question of whether an exception to the statute of limitations exists for this matter. Overall, the complaint provides sufficient information for Moraga to know how to prepare for the hearing and how to participate in resolution session and mediation for issue three. Therefore, issue three is sufficiently pled.

ORDER

1. Moraga's Motion for Reconsideration is granted.

2. Student's issue two is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student's issue three is sufficiently pled under title 20 United States Code section 1415(c)(2)(D).

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, this matter will proceed as to the remaining issues.

7. All dates previously set in this matter are confirmed.

DATE: August 3, 2018

DocuSigned by:
Paul H. Kamoroff
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PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings