BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

GARVEY SCHOOL DISTRICT.

OAH CASE NUMBER 2019080700

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 20, 2019, Parents on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, naming Garvey School District. On September 4, 2019, Garvey filed a timely Notice of Insufficiency as to the complaint.

APPLICABLE LAW

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.)

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.

In *Avila v. Spokane Sch. District 81* (9th Cir. 2017) 852 F.3d 936, the Court found that the Individuals with Disabilities Education Act's statute of limitations barred claims that were filed more than two years after the time parents "knew or should have known" about the actions forming the basis for their complaint. (*Id.* at pp. 937, 945.) The Individuals with Disabilities Education Act is commonly referred to as the IDEA. The Court held that in the IDEA's statute limitations provision, Congress intended to enact a "discovery rule," not an "occurrence rule." (*Id.* at pp. 939-945.)

California implements the IDEA through its special education law. (*Miller v. San Mateo-Foster City Unified School Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.) Consistent with the IDEA, California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the underlying facts that form a basis for the action. (Ed. Code, § 56505, subd. (l).) Knowledge that a student's education is inadequate is sufficient for the statute of limitations to begin to accrue. (*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 & revd. in part (9th Cir. 2014) 767 F.3d 842, 858-859.)

DISCUSSION

Student's complaint alleges seven claims, some of which are sufficient and some of which are insufficient. Student's issues are listed as A through G, on pages 12 and 13 of the complaint. The issues are discussed below.

Issues A, E, F, and G of the complaint are sufficiently pled to put Garvey on notice as to the basis of Student's claims. Student's compliant challenges the adequacy and

appropriateness of the placement and services Garvey offered Student as part of his individualized education program, also known as an IEP, specifically alleging an inadequate level of occupational therapy services to address his sensory issues within the statutory time period. Student also contends Garvey failed to consider Parents' concerns and to revise his IEPs to respond to his lack of progress and sensory issues. The complaint provides sufficient facts describing these problems to provide Garvey with an awareness and understanding as to the basis of these alleged violations.

However, Issues B, C, and D, are insufficiently pled. Issue B claims that Garvey failed to properly evaluate Student before providing him with special education and related services. However, Student began receiving special education and related services in February 2016, more than three years from the date the complaint was filed. The complaint does not assert any facts that would put Garvey on notice to support extending any of Student's claims beyond August 20, 2017, two years from the date the complaint was filed.

Issue C alleges Garvey failed to asses Student in all areas of disability. However, the complaint fails to describe which areas of disability Garvey failed to assess.

Issue D alleges Student's IEPs did not contain measurable academic and functional goals. However, the complaint does not discuss why those goals were not measureable, as the complaint just alleges an ultimate fact without facts to support that conclusion. As to Issues B, C, and D, the complaint fails to describe with sufficient information the issues forming the basis of these claims and the grounds to support extending Student's claims beyond August 20, 2017, to put Garvey on notice. Accordingly, Issues B, C, and D are insufficient as the complaint fails to provide Garvey with an awareness and understanding of these alleged violations.

ORDER

1. Issues A, E, F, and G of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues B, C, and D of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. 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. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues A, E, F, and G of Student's complaint.

IT IS SO ORDERED.

DATED: September 13, 2019

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Rommel P. Cruz
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Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings