BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SALINAS CITY ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018110478 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 9, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Salinas City Elementary School District, and Salinas Union High School District. On November 21, 2018, both school districts filed notices of insufficiency. On November 28, 2018, OAH found the complaint insufficiently plead as to the Elementary School District insofar as claims were made for the period of time preceding the two-year statute of limitations for filing a complaint pursuant to the Individuals with Disabilities Education Act. In regards to the High School District, OAH found the complaint was insufficiently pled in its entirety because it lacked facts, which if found true, would support a claim against the High School District.

Student was granted leave to file an amended complaint, so long as the amended complaint was filed within 14 days of the finding of insufficiency. Student timely filed an amended complaint on December 12, 2018, and on December 27, 2018, both the Elementary School District and the High School District filed new notices of insufficiency regarding the amended complaint.

APPLICABLE LAW

Sufficiency of Complaint

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).

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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.) 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 IDEA's statute of limitations requires courts to bar claims brought more than two years after the parents or local educational agency "knew or should have known" about the actions forming the basis of the complaint. (20 U.S.C. § 1415(f)(3)(C); *Avila v. Spokane School District 81* (9th Cir. 2017) 852 F.3d 936, 937) However, California, as permitted by IDEA, title 20 United States Code section 1415(f)(c)(3) and 34 Code of Federal Regulations 300.511(e), has its own statute of limitations. (Ed. Code, § 56505, subd. (l) [any request for a due process hearing shall 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].)

In California, a claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action, i.e., when the parent knows that the education provided is inadequate. (*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, *aff'd in part and reversed on other grounds* at *M.M. v. Lafayette School Dist.* (9th Cir. 2014) 767 F.3d 842; *M.D. v. Southington Board of Ed.* (2d Cir. 2003) 334 F.3d 217, 221.) In other words, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that it has a legal claim. (See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039; see also *Miller v. San Mateo– Foster City*

Unified School Dist. (N.D. Cal. 2004) 318 F. Supp. 851, 861 [interpreting then Ed. Code, § 56505, subd. (j)].)

Both federal and state law establish exceptions to the statute of limitations where the parent was *prevented* from filing a request for due process due to: (1) specific misrepresentations by the local educational agency (LEA) that it had resolved the problem forming the basis of the complaint, or (2) the LEA's withholding of information from the parent that was required to be provided to the parent. (20 U.S.C. § 1415(f)(3)(D); Ed. Code § 56505(l).) These narrow exceptions require that the LEA's actions be intentional or flagrant. "The statutory requirement that the misrepresentation or withholding prevented (the parent) from requesting the hearing further evidences the stringency, or narrowness, of these exceptional circumstances." (*School District of Philadelphia* (Pa. State Educational Agency, Appellate Panel, March 5, 2008) 49 IDELR 240, p. 5, 108 LRP 13930.)

DISCUSSION

Each school district filed a notice of insufficiency as to the amended complaint. Student attended school in the Elementary District until the end of the 2016-2017 school year when she completed sixth grade, and makes claims for acts and omissions of the Elementary District which occurred over a period of several years. Student was to enter middle school, which is part of the High School District, at the beginning of the 2017-2018 school year, and Student claims the High School District denied her a FAPE during that school year.

Elementary District's Notice of Insufficiency

In its notice of insufficiency regarding Student's original complaint, Student claimed the complaint was insufficiently plead in regards to claims preceding the two-year statute of limitations, and this was found to be true. Student stated in one part of the original complaint that claims were not being made for the period of time preceding the two-year statute of limitations, but then seemed to raise claims for this period of time in another part of the complaint. This ambiguity resulted in the complaint being insufficiently plead as to the Elementary School District in this regard. However, the complaint was sufficiently plead as to other claims against the Elementary School District, for acts or omissions within the two-year period that preceded the filing of the complaint.

The Elementary School District acknowledges in its current notice of insufficiency that the ambiguity in the original complaint has been corrected in the amended complaint. However, the Elementary School District now asks that the complaint be found to be insufficiently plead in regards to claims that preceded the two-year statute of limitations, because it believes the facts alleged in the complaint, if found to be true, do not establish grounds to extend the statute of limitations.

An administrative law judge should determine whether the statute of limitations should be extended, and for how long, only after an evidentiary determination. Student

claims in the amended complaint, as grounds for extending the statute of limitations, that at various times more than two years before the original complaint was filed, Parents were not provided with the notice of procedural safeguards or not provided with prior written notice at various times when the Elementary School District was required to do so. In addition, Student also claims that at various times more than two years before the original complaint was filed, Parents were provided with misleading information by the Elementary School District. In the amended complaint Student has now highlighted portions of statements that would support these claims, making it more obvious that there might be grounds for extending the statute of limitations than appeared in the original unhighlighted complaint. Although the Elementary School District disputes these claims, that does not render them insufficiently pled, and the determination of whether the two-year statute of limitations can be extended can be made only after an evidentiary determination. The amended complaint is sufficiently pled as to the Elementary School District.

High School District's Notice of Insufficiency

Student has now alleged facts in the amended complaint which, if found true, might result in a finding that the High School District denied Student a FAPE for at least the 2017-2018 school year. She provides the name of the public middle school she was initially enrolled in for the 2017-2018 school year, and discusses events and communications that occurred before the school year began. In its notice of insufficiency the High School District claims the amended complaint is insufficiently pled because specific dates are not given for times when Parents and Student communicated or interacted with the High School District. Further, the High School District now claims the middle school in which Student was enrolled by Parents prior to the beginning of the 2017-2018 school year is not one of its middle schools.

Student was to begin middle school at the beginning of the 2017-2018 school year. The window of time between May of the 2016-2017 school year, when she was provided with an IEP by the Elementary School District, and the beginning of the 2017-2018 school year is so small it should not be necessary for Student to give specific dates of the communications between Student, Parents, and the High School District in the amended complaint. The fact that the middle school where Student was allegedly enrolled is not a part of the High School District does not render the amended complaint insufficiently pled. That information provides the High School District with the means to defend itself, and nothing precludes the High School District from pursuing a different vehicle to be excluded from this matter.

ORDER

1. The complaint is sufficient 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.

DATE: December 31, 2018

DocuSigned by:
Rebecca Freie
D1AE8D9E81A848C...

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings