BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LAKE TAHOE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023100466

ORDER DETERMINING STUDENT'S COMPLAINT INSUFFICIENT IN PART

NOVEMBER 2, 2023

On October 16, 2023, Parents on behalf of Student, filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH, naming Lake Tahoe Unified School District. On October 31, Lake Tahoe filed a notice of insufficiency as to the 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).

LAKE TAHOE FILED A TIMELY NOTICE OF INSUFFIIENCY

The complaint is deemed sufficient unless a party notifies OAH 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).) Lake Tahoe filed its notice of insufficiency within 15 days of receiving the complaint. Thus, Lake Tahoe timely filed a notice of insufficiency.

STUDENT'S COMPLAINT IS INSUFFICIENT IN PART

Lake Tahoe contends that Student's complaint is insufficient because Student failed to plead facts regarding the statute of limitations.

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 considering 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.)

Student's complaint alleges one issue with fourteen sub issues against Lake Tahoe. All of Student's issues are insufficiently pled, in part, as to the statute of limitations.

Student filed the complaint on October 16, 2023, and thus the applicable statute of limitations began on October 16, 2021. Student's issues against Lake Tahoe allege violations going back to 2019.

The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two year period. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 444-445; *E.J. v. San Carlos Elementary School Dist*. (N.D.Cal. 2011) 803 F.Supp.2d 1024, 1026, fn. 1.) 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 by the local educational agency's withholding of information that was required to be provided to the parent.

In *Avila v. Spokane School District 81*, (9th Cir. 2017) 852 F.3d 936 (*Avila*), the Ninth Circuit held that the two-year statute of limitations for filing a request for due process pursuant to the Individuals with Disabilities Education Act begins when a parent "knew or should have known about the alleged action that forms the basis of the compliant." (*Avila*, at p. 944.) At that point, parents have two years to file their request for due process. (20 U.S.C. § 1415(f)(3)(C) and 1415(b)(6)(B).)

Here, Student failed to plead any facts in support of tolling the statute of limitations. Student neither alleged any exception to the statute of limitations nor the discovery rule. Lake Tahoe is left to guess upon which basis or bases Student is alleging it can toll the statute of limitations. Thus, the complaint is unclear, confusing, and insufficiently pled to allow Lake Tahoe to adequately participate in the resolution session, mediation, and due process hearing. Accordingly, Student's issues listed in the complaint, at issue 1 with sub issues labeled a through n, to the extent Student asserts claims before October 16, 2021, are insufficient.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to all allegations in issue 1, sub issues labeled a through n, that are outside of the statute of limitations.
2. Student is permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The amended complaint must comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii) and must 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.

4. If Student fails to file a timely amended complaint, the hearing will proceed as to the allegations in issue one, sub issues labeled a through n, within the timeframe of October 16, 2021, through October 16, 2023.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings