BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020030087

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY SUFFICIENT

MARCH 13, 2020

On March 2, 2020, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Long Beach Unified School District. On March 12, 2020, Long Beach filed a 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.

DISCUSSION

Student's complaint alleges three issues, each with multiple problems listed as support. The issues are discussed below.

With regard to Issue One, Student alleges Long Beach's March 21, 2017 individualized education program, referred to as an IEP, failed to offer him a free appropriate public education, referred to as FAPE. Student further alleges his Parents did not know, or have reason to know of the facts underlying the claim until on or about January 7, 2020. Aside from the claim that Parents did not know, or have reason to know, of the facts underlying the claim until January 7, 2020, Student does not allege an exception to the two-year statute of limitations or any facts as to how an exception to the statute of limitations applies. Simply stating that Parents were not aware does not put Long Beach on notice of the facts underlying the issue regarding a challenge to the two-year statute of limitations. (*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; *K.P., etc., v. Salinas Union High School Dist.* (N.D. Cal. April 8, 2016, Case No.5:08-cv-03076-HRL) 2016 WL 1394377.) Therefore,

Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Issue Two alleges the March 8, 2018 IEP failed to offer Student FAPE in the least restrictive environment. Student lists seven problems to support his clam that Long Beach failed to offer him FAPE in the least restrictive environment. Student alleges Long Beach failed to conduct an appropriate triennial evaluation in all areas of suspected disability. Student alleges placement in a mild to moderate special day class was not individualized to meet his needs. Student alleges he has a history of maladaptive behaviors, deficits in language skills, and delays in reading, writing, and mathematics, but was not offered appropriate behavior, speech and language, or academic services. Student also alleges Long Beach failed to offer appropriate goals and failed to prevent him from being bullied. These "problems" are sufficient to provide Long Beach with an awareness and understanding of the issues forming the basis of the complaint.

Similarly, Issue Three alleges the October 15, 2019 IEP failed to offer Student FAPE in the least restrictive environment. Student lists many of the same problems to support his clam that Long Beach failed to offer him FAPE in the least restrictive environment. Student also alleges Long Beach committed a procedural violation by failing to have an IEP in place at the beginning of the 2019-2020 school year. Again, these "problems" are sufficient to provide Long Beach with an awareness and understanding of the issues forming the basis of the complaint.

Therefore, Issues Two and Three are sufficiently pled to put Long Beach on notice as to the basis of Student's claims.

Student's proposed resolutions request an independent educational evaluation, placement in a less restrictive environment, behavior services and supervision through a

nonpublic agency, appropriate speech and language therapy, and compensatory education. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's complaint are well-defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issues Two and Three of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues One of Student's complaint is 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 Two and Three in Student's complaint.

DocuSigned by:
Linda Johnson
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Linda Johnson

Administrative Law Judge

Office of Administrative Hearings