BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018070307
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT RE LONG BEACH; ORDER DENYING LONG BEACH'S MOTION TO DISMISS IN PART AS MOOT
LONG BEACH UNIFIED SCHOOL DISTRICT AND LOS ANGELES UNIFIED SCHOOL DISTRICT.	

On June 29, 2018, Parents on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Long Beach Unified School District and Los Angeles Unified School District. Long Beach Unified received Student's complaint on July 2, 2018. On July 16, 2018, Long Beach Unified timely filed a Notice of Insufficiency as to Issue A of Student's complaint, the only issue in Student's complaint pertaining to Long Beach Unified, and concurrently filed a motion to dismiss in part claims outside the two-year statute of limitations.

APPLICABLE LAW

Sufficiency of the 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).

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

[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).

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 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).) Education Code section 56505, subdivision (l) provides as follows: "A request for due process hearing arising under subdivision (a) of Section 56501 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 accordance with Section 1415(f)(3)(D) of title 20 of the United States Code, the time period specified in this subdivision does not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following: (1) Specific misrepresentation by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or (2) The withholding of information by the local educational agency from the parent that was required under this part to be provided to the parent."

A claim under the Individuals with Disabilities Education Act accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action; that is, when the parent knows that the education provided is inadequate. (*M.D. v. Southington Bd. 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 he or she has a legal claim. (See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1032, 1039.) In *Miller v. San Mateo-Foster City Unified School District* (N.D.Cal. 2004) 318 F.Supp.2d 851, 860, the court held the cause of action accrued when parents received notice of their procedural rights in connection with a school district's assessment of their child, even if the assessment's findings were later found to be incorrect.

DISCUSSION

Notice of Insufficiency

Issue A of Student's complaint contends that Long Beach Unified denied him a free appropriate public education by failing to identify Student as a child with a disability during the 2015-2016 school year and extended school year. Long Beach Unified's NOI contends that Student's complaint is vague and absent of any details, offering no specific facts to support extending the two-year statute of limitations beyond June 29, 2016, or how Long Beach Unified failed its child find obligation after June 28, 2016.

Issue A of Student's complaint is insufficiently pled. The complaint fails to assert any facts supporting an extension of the statute of limitations beyond June 29, 2016, two years from the date the complaint was filed. Student makes no allegation that Long Beach Unified made any specific misrepresentation that it had solved the problem forming the basis of the due process hearing request, or that it withheld information from the parent that parent was entitled to.

Furthermore, Student's complaint fails to assert facts regarding alleged violations by Long Beach Unified to fulfill its child find obligation from June 29, 2016, to the time Student enrolled in Los Angeles Unified for the 2016-2017 school year. The complaint makes no assertion that from June 29, 2016, through his enrollment at Los Angeles Unified, Student was attending school at Long Beach Unified. The complaint further fails to allege facts that would trigger Long Beach Unified's child find duty during that period. Furthermore, though the complaint claims that Parent "verbally asked for a referral to special education on numerous occasions," it fails to assert if Parent made such a request to Long Beach Unified after June 28, 2016.

Issue A of Student's complaint is not pled sufficiently enough to provide Long Beach Unified with an awareness and understanding of the issues forming the basis of the complaint as it relates to Long Beach Unified. As a result, it does not provide Long Beach Unified with sufficient information to adequately prepare for and participate in the hearing and mediation. Therefore, Student's complaint is insufficient as to Issue A.

Among Student's proposed resolutions are requests for compensatory education, including nonpublic school, academic, occupational therapy, adapted physical education, and counseling services. 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 resolutions stated in Student's complaint are sufficiently defined and meet the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Motion to Dismiss

Long Beach Unified moved to dismiss claims outside the two-year statute of limitations. Having determined Student's complaint is insufficiently pled as to alleged violations beyond the two-year statute of limitations, the motion to dismiss is denied as moot.

ORDER

1. Issue A of Student's complaint is insufficient under title 20 U.S.C. section 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

3. 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.

4. If Student fails to file a timely amended complaint, the hearing shall proceed against Los Angeles Unified only, on Issues B, C, and D in Student's complaint, and Long Beach Unified dismissed as a party.

5. Long Beach Unified's Motion to Dismiss in Part is denied as moot.

DATE: July 17, 2018

DocuSigned by:
Rommel P. Cruz
ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings

[2] The filing of an amended complaint will restart the applicable timelines for a due process hearing.