BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

GROSSMONT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2024080929

ORDER DETERMINING DUE PROCESS COMPLAINT PARTIALLY INSUFFICIENT

SEPTEMBER 11, 2024

On August 26, 2024, Parent on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings naming Grossmont Union High School District. The Office of Administrative Hearings is called OAH. Grossmont Union High School District is called Grossmont Union.

On September 10, 2024, Grossmont Union filed a notice of insufficiency as to Issue 1 in the complaint. On September 11, 2023, Student filed a notice of opposition to Student's notice of insufficiency.

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, and 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).) 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.) 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 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).)

Student filed the complaint on August 26, 2024, and thus the applicable statute of limitations began on August 26, 2022. Student's Issue 1 alleges Grossmont Union was on notice Student had a disability at the time of a November 29, 2021 Student Study Team Meeting but failed to offer an assessment plan or provide Parent a prior written notice or procedural safeguards.

Grossmont Union contends that Student fails to allege any facts at Issue 1 to support claims beyond the two-year statute of limitations. Grossmont Union is correct. Student does not allege that Parent was prevented from filing a due process request earlier on claims arising prior to August 26, 2022, due to specific misrepresentations by Grossmont Union or because Grossmont Union withheld required information from Parent. Student failed to plead any facts in support of tolling the statute of limitations. Grossmont Union 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 Grossmont Union to adequately participate in the resolution session,

mediation, and due process hearing. Accordingly, Issue 1 insufficient to the extent it asserts a claim prior to August 26, 2022.

ORDER

1. Issue 1 of Student's complaint as to claims arising before August 26, 2022, is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
2. Student will be 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 United States Code 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 shall proceed only on Issues 2, 3, and 4 of Student's complaint as to claims arising on or after August 26, 2022.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings