BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. JACOBY CREEK ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2018110011 ORDER DETERMINING SUFFICIENCY OF DUE PROCESS COMPLAINT

On October 31, 2018 Student filed a Due Process Hearing Request[1] with the Office of Administrative Hearings naming Jacoby Creek Elementary School District. On November 13, 2018, Jacoby Creek filed a Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW

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 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,

[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).

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 part if the parent was prevented from requesting the due process hearing request; or (2) The withholding of information by the location 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

Student's complaint contained two issues. Jacoby Creek is challenging Student's first issue. In Student's first issue, Student alleged Jacoby Creek denied Student a free appropriate public education when it failed to provide an assessment plan and to timely conduct a comprehensive assessment, failed to provide appropriate placement, support, and services to Student, failed to consistently implement recommendations of her deaf and hard of hearing teacher and audiologist, failed to develop goals and provide accommodations for her unique needs, including offering her extended school year support. Finally, Student alleges Jacoby Creek also failed to report on Student's progress to parents, and withheld information about direct, specialized instruction that would support Student's math deficiencies from Parents. Student alleges this occurred beginning in school year 2012-2013 and continued until October 2016.

In a footnote of issue one, Student identifies the "time period preceded the 2-year statute of limitations as the District withheld information concerning what the District was obligated to provide Student under the special education laws."

Jacoby Creek avers Student's issue in the complaint is insufficient because it does not contain facts relating to the issue. Specifically, Jacoby Creek argues Student was obligated to provide in her complaint what information Student believes Jacoby Creek failed to provide or allege that withholding the information "was intentional or flagrant, as required by law."

Student's complaint provided five pages of facts beginning with Student's enrollment in Jacoby Creek as a kindergartner until she was enrolled at a charter school for the 2017-2018 school year. The complaint provided a description of the problem and the time period in question, it provided facts related to the problem and included proposed resolutions, such as Student's request for Jacoby Creek to fund independent educational evaluations and compensatory education for Student.

The purpose of an NOI is to determine whether the facts alleged are sufficient to put the responding parties on notice of the issues forming the basis of the complaint to allow them to participate in a resolution session and mediation.

Student has provided Jacoby Creek sufficient facts to put it on notice of the issues forming the basis of the complaint. Student's complaint sufficiently identifies the issue and provides adequate related facts about the problem to permit Jacoby Creek to respond to the complaint, which it has done, and participate in a resolution session and mediation. Therefore, the complaint is sufficient.

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: November 15, 2018

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings