BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WALNUT CREEK SCHOOL DISTRICT.

OAH CASE NUMBER 2024030643

ORDER FINDING DUE PROCESS COMPLAINT PARTIALLY SUFFICIENT AND PARTIALLY INSUFFICIENT

APRIL 3, 2024

On March 19, 2024, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Walnut Creek School District, called Walnut Creek. On April 2, 2024, Walnut Creek filed a 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, called a FAPE, (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).) 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 hearing due to specific misrepresentations by the school district it had resolved the problem forming the basis of the complaint, or the school district withheld information it was required to provide to the parent.

Consequently, both federal and California law contain a two-year statute of limitations for special education administrative actions and require a finding confirming when the parent knew of the facts forming the basis of the claim. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2); Ed. Code, § 56505, subd. (*l*).) California, however, has adopted its own manner of applying this discovery rule.

Under California law, a claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action, for example, when the parent knows the education provided to their child is inadequate. (*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 (*M.M.*), affd. in part and revd. in part on other grounds by *M.M. v. Lafayette School Dist., et al.* (9th Cir. 2014) 767 F.3d 842, 859.) A statute based upon the discovery rule begins to run when a party is or should have been aware of the facts supporting a legal claim, not earlier, when the act occurred, and not later, when a party learns it has a legal claim. (*M.M., supra,* at *18).

It does not matter if the parent understood the facts supported a legal claim. Rather, the inquiry is whether the parents had knowledge of the problem. Congress intended to obtain a timely and appropriate education for special needs children. Congress did not intend to authorize the filing of claims for a denial of a FAPE many years after the alleged wrongdoing occurred. (*Alexopulous v. San Francisco Unified School Dist.* (9th Cir. 1987) 817 F.2d 551, 556.)

To invoke an exception to the two-year statute of limitations, a parent must show the school district's misrepresentation or withholding of information caused the parent's failure to file the due process complaint on time. Therefore, where the evidence shows the parents were fully aware of their procedural options, they cannot excuse a late filing

by pointing to the school district's failure to formally notify them of those options. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F.3d 233, 246-247.

Here, Student alleges eight issues challenging the educational program offered to Student starting in the 2018-2019 school year and continuing through the 2023-2024 school year. Walnut Creek argues Issues 1, 3, 4, 5, and 7 of Student's complaint allege claims outside the two-year statute of limitations. Walnut Creek further argues Issues 2, 3, 4, 5, and 7 are insufficiently pled to put Walnut Creek on notice of the nature of the problem.

Student filed his complaint on March 19, 2024, more than two years after the end of the 2018-2019, 2019-2020, and 2020-2021 school years, and during the 2021-2022 school year. Student's claims prior to March 19, 2022, are barred unless an exception to the statute of limitations applies.

Student claims in Issues 1, 3, 4, 5, and 7 that he was denied a FAPE during the 2018-2019 through 2023-2024 school years because Walnut Creek did not provide Student's educational documents to Parents in their native language, did not comprehensively assess Student in all areas of suspected disability, failed to offer appropriate measurable goals and implement Student's individualized education programs, and failed to offer Student a FAPE. With respect to Issues 1, 3, 4, 5, and 7, Student claims Walnut Creek intentionally made misrepresentations to Parents or withheld information from Parents it was required to provide. However, the complaint does not allege specific facts Walnut Creek intentionally misled Parents or knowingly deceived them about Student's progress, or withheld information it was required to provide. Therefore, these allegations fall short of a misrepresentation by Walnut Creek, or a withholding of required information. Accordingly, Student fails to allege facts that

support an exception to the two-year statute of limitations and Issues 1, 3, 4, 5, and 7 are insufficient as to claims arising before March 19, 2022.

Walnut Creek further argues that insufficient facts are alleged to support a claim under Issues 2, 4, 5, and 7. Issue 2 alleges Walnut Creek failed to produce educational records during the 2022-2023 and 2023-2024 school years. Specifically, Student alleges his counsel requested a complete copy of Student's educational file on March 16, 2023, and that Walnut Creek produced an incomplete copy of Student's educational file on March 21, 2023. As pled, Student's allegations in Issue 2 are sufficient as to the 2022-2023 school year. However, the complaint contains no facts alleging Student requested documents during the 2023-2024 school year or that Walnut Creek failed to produce requested documents. Accordingly, Issue 2 fails to plead specific facts supporting a claim Walnut Creek failed to produce requested documents during the 2023-2024 school year. Therefore, Issue 2 is insufficiently pled as to the 2023-2024 school year.

Walnut Creek argues Issue 4 fails to allege facts explaining which goals were inappropriate or for which period and is vague and confusing because the sub-issues allege different claims. As drafted, the complaint is sufficient to put Walnut Creek on notice of Student's contention Walnut Creek did not develop appropriate and measurable goals addressing Student's needs in academics, behavior, mental health, social skills, speech and language, fine and gross motor, and sensory processing during the statutory period, and did not offer criteria for measuring Student's goals. Therefore, Issue 4 is sufficiently pled as to claims arising after March 19, 2022.

As to Issue 5, Walnut Creek argues the complaint fails to identify the specific individualized education program, called IEP, or services that were not provided. Although the complaint refers to an IEP dated September 7, 2022, it fails to allege specific facts as to the services or supports that were not implemented and the

timeframes during which the specific failures to implement occurred. The allegations in this issue fail to provide Walnut Creek with adequate notice of the claims against it to allow Walnut Creek to prepare for resolution session, mediation, or hearing. Issue 5 is insufficiently pled.

Issue 7 alleges Walnut Creek failed to offer Student an appropriate educational program during the 2018-2019 through 2023-2024 school years. Walnut Creek argues Issue 7 fails to state specific facts to provide it an awareness of Student's claim. Issue 7 contains sufficient facts to put Walnut Creek on notice of Student's challenges to his educational program during the statutory period. The complaint alleges, among other things, that Walnut Creek's FAPE offers during the 2023-2024 school year provided insufficient speech and language, occupational therapy, behavior services, developed inappropriate and/or insufficient goals to address Student's areas of need in occupational therapy, speech and language, academics, school readiness, social-emotional, and behavior, failed to offer a one-to-one aide, and failed to offer placement in the least restrictive environment. Issue 7 is sufficient as to claims arising after March 19, 2022.

ORDER

1. Issues 1, 3, 4, 5, and 7 of the complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to claims arising prior to March 19, 2022.
2. Issue 2 of the complaint is sufficiently pled as to claims arising during the 2022-2023 school year, and insufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to claims arising during the 2023-2024 school year.
3. Issue 5 of the complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to claims arising after March 19, 2022.

4. Issues 4 and 7 of the complaint are sufficient under title 20 United States Code section 1415(b)(7)(A(ii) as to claims arising after March 19, 2022.
5. Student will be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
6. 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.
7. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue 2, 4, and 7 of Student's complaint as to claims arising on or after March 19, 2022, and as to Issue 2, claims arising during the 2022-2023 school year.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings