BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SONORA ELEMENTARY SCHOOL DISTRICT AND COLUMBIA UNION SCHOOL DISTRICT.	OAH Case No. 2018090160 ORDER DETERMINING COMPLAINT SUFFICIENT

On September 5, 2018, Parent on behalf of Student filed a Due Process Hearing Request [1] (complaint) with the Office of Administrative Hearings naming Sonora Elementary School District and Columbia Union School District. On September 18, 2018, Columbia Union timely filed a Notice of Insufficiency and a Motion to Dismiss as to Student's complaint. This order addresses only the sufficiency of the complaint as to Columbia Union. The motion to dismiss will be addressed in a separate order.

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 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

[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).

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 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 alleges one issue with three sub-issues against Columbia Union that is sufficiently pled to put Columbia Union on notice of the issues forming the basis of the complaint.

Issue one of Student's complaint contends Columbia Union denied Student a free appropriate public education by failing in its child find obligations, including: (a) failing to timely conduct a special education assessment in all areas of suspected disability; (b) failing to offer an appropriate placement, services, goals, behavior intervention plan, and accommodations to meet his unique needs; and (c) misrepresenting the results of an assessment. Student's complaint further alleges Columbia Union withheld information by failing to provide copies of procedural safeguards or notify Parents of their rights under the Individuals with Disabilities Education Act in 2011, 2013, and 2016.

Student's proposed resolutions for Issue one from Columbia Union include: (1)independent educational evaluations in psychoeducation, including social and emotional functioning, behavior, phonological processing, academic achievement, and executive function, and assistive technology; (2) compensatory education in academic tutoring, assistive technology services, counseling services, and individualized reading program; (3) assistive technology; and (4) reimburse parents for all educational expenses incurred, including transportation.

Student's complaint identifies the issue, and a possible exception to the statute of limitations, and adequate related facts about the problem to permit Columbia Union to respond to the complaint, participate in a resolution session, mediation, and prepare for hearing.

Therefore, Student's complaint is sufficient.

ORDER

1. Issue one of Student's complaint is sufficiently under section title 20 United States Code 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: September 24, 2018

DocuSigned by:
Jackie C. Dai
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JACKIE C. DAI
Administrative Law Judge
Office of Administrative Hearings