BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2018050377
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT.	

On May 7, 2018, Parents on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Palos Verdes Peninsula Unified School District and which contained expedited and non-expedited issues for hearing. On May 15, 2018, District timely 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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings.

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

[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).

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, *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.) Therefore, District's notice of insufficiency as it applies to Student's issue 2, which states that District failed to implement the Individuals with Disabilities Education Act as it applies to District's expulsion of Student, is denied.

DISCUSSION

Student's complaint contains 13 issues, some of which are sufficient and some which are insufficient. The issues are discussed below.

In issue 1, Student alleges that District failed in its child find obligation to him. Student contends District knew or had reason to suspect that Student might have a disability based upon Parents' repeated written concerns to District staff and school principals as early as May 9, 2010, and based upon comments in Student's report cards through 2014. Student states that District was on notice since 2009 that he had difficulty reaching grade level standards, was inattentive, distractible, often sidetracked, was self-conscious, failed to complete assignments, lacked organization, and had repeatedly low grades. For the time period May 7, 2016, to the filing of Student's complaint on May 7, 2018, issue 1 is sufficient.

However, in issue 1 Student attempts to extend the statute of limitations beyond the two years permitted under federal and state law. 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).) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), do 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. Here, in issue 1, Student fails to state any facts supporting either of the exceptions to the two-year statute of limitations.

California implements the IDEA through its special education law. (*Miller v. San Mateo-Foster City Unified School Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860 (*Miller*).) Consistent with the IDEA, California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the underlying facts that form a basis for the action. (Ed. Code, § 56505, subd. (l).) Knowledge that a student's education is inadequate is sufficient for the statute of limitations to begin to accrue. (*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 & revd. in part (9th Cir. 2014) 767 F.3d 842, 858-859.) In *M.M.*, the District Court found that "parents had sufficient knowledge of the educational goings-on inside and outside of the classroom to be put on notice of their underlying claims." (*M.M., supra*, at *18) In other words, the statute of limitations begins to run when a party is aware of the underlying facts that would support a legal claim, not when a party learns that the action was wrong. (*M.M. supra*, at *18; *see also Bell v. Bd. of Educ. of the Albuquerque Pub. Schs.* (D.N.M. March 26, 2008, No. CIV 06–1137 JB/ACT.) 2008 WL 4104070, at *17.)

Student fails to state any facts to support a finding that Parents did not know or should not have known that Student was having difficulties or that District should have assessed Student as far back as 2009. To the contrary, Student's complaint states that Parents wrote to District in 2010 that they had concerns about Student's education. Additionally, Student's complaint states that Parents knew that District had commented in Student's report cards as far back as 2009 that Student was having difficulties in school. To the extent that Student means to apply an extension of the two-year statute of limitations back to 2009, he has failed to state sufficient facts to do so. District's notice of insufficiency is sustained as to allegations in issue 1 arising prior to May 7, 2016.

Student's issue 2 alleges that District failed to implement the Individuals with Disabilities Education Act as it applies to District's expulsion of Student. This is an issue that must be heard in an expedited hearing. Pursuant to the authority cited above, this issue is not amenable to a notice of insufficiency. District's notice of insufficiency is therefore overruled as to issue 2.

In issue 3, Student alleges that Parents made a request for his school records in April 2018, but District did not provide all of the records. This is enough information to put District on notice of the basis of Student's problem. Issue 3 is sufficient as plead.

In issue 4, Student states District misrepresented several statements Parents made at a student study team meeting to avoid assessing Student. This issue fails to state how District's conduct at the meeting denied Student a free appropriate public education. Student fails to state, for example, if Parents requested an assessment at this meeting, and whether District failed to act upon the request. There are not enough facts in issue 4 to put District on

notice of what the issue is and how it relates to a denial of FAPE under the IDEA. Issue 4 is insufficient as plead.

In issue 5, Student alleges that on March 10, 2017, and March 12, 2018, District attempted to dissuade Parents from seeking an assessment by dissuading Parents from putting their request for an assessment in writing. Student fails to state what exactly happened on the two dates in question. He fails to state which District employees did the acts alleged, and in what context the acts occurred. He fails to state if Parents did put their request for assessment in writing, and, if so, to whom those requests were made. Issue 5 is insufficient as plead.

In issue 6, Student alleges that District failed to consider the evaluations of Student's teachers between 2009 and 2018 in determining whether to assess Student. Issue 6 does not state any facts to support the contentions. Student fails to state what the evaluations of Student were, which teacher stated them, how they were stated, whether Parents were aware of the evaluations at the time, and how the evaluations should have informed District that Student should have been assessed. Issue 6 also suffers from the same deficiencies as issue 1 as it pertains to extending the two-year statute of limitations. Student fails to state any facts in issue 6 that would support applying one of the two statutory exceptions to the statute of limitations. The issue also fails to state any details to support extending the statute based on Parents not knowing about the underlying facts alleged. For these reasons, issue 6 is insufficient as presently stated.

Issue 7 states that District intentionally refused to assess him and implement an IEP when he showed signs of a disability. This issue contains no facts whatsoever to support the allegation. Student fails to state what disability he had and what the signs were that should have made District aware that he had a disability and thus should have assessed him. Issue 7 is fully insufficient for these reasons. Additionally, issue 7, to the extent it raises claims outside the two-year statute of limitations, suffers from the same deficiencies as do issues 1 and 6.

In issue 8, Student contends that District retaliated against him during March and April 2018 for seeking a FAPE. Student contends the retaliation consisted of District refusing to assess him and by insisting on expelling him. District contends that the issue is insufficient because it fails to detail the facts and circumstances underlying the expulsion. However, this is a retaliation issue, not an issue directly relating to Student's expulsion. The issue clearly states the way in which Student believes District retaliated against him. For purposes of pleading requirements, issue 8 is sufficient as plead. [2]

[2] To the extent that any of the allegations in Student's complaint are outside OAH's jurisdiction, those contentions will be addressed in response to District's pending motion to dismiss.

In issue 9, Student contends that District discriminated against him for having a disability by refusing to assess him and insisting on expelling him during March and April 2018, when other similarly situated students were not expelled. Like issue 8, for purposes of pleading requirements, issue 9 is sufficient as plead.

In issue 10, Student contends that District failed to determine during March and April 2018, whether he had a disability which may have contributed to the alleged conduct which formed the basis of the expulsion proceedings against him. To the extent issue 10 concerns the expulsion proceedings against Student, and raises expedited issues, it is not amenable for a notice of insufficiency. To the extent that Student alleges District failed to meet its child find obligations during the months in question, issue 10 is insufficiently plead. Student provides no facts to support his contention. He fails to state what his suspected disability was and fails to state facts showing that District was under notice that he might have a disability. For these reasons, issue 10 is insufficient as it relates to a purported contention that District failed to meet its child find obligation to Student.

In issue 11, Student again appears to contend that District failed to meet its child find obligation to him. Again, the issue is devoid of facts that would put District on notice of when and how District should have known Student might have a disability. The issue fails to state which District staff made subjective observations, when and how the observations were made, and if and when Parents were made aware of the observations. Student fails to state what objective criteria should have been used and what the subjective criteria was that Student alleges District did use. For these reasons, issue 11 is fully insufficient. Furthermore, Student's allegations concerning the period of 2009 through May 7, 2016, suffer from the same insufficiencies relating to extending the statute of limitations as do issues 1, 6, and 7. Issue 11 is therefore also additionally insufficient as to any allegation arising prior to May 7, 2016.

In issue 12, Student alleges that District violated the Rehabilitation Act (Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) by failing to consider Student's individual special needs between 2009 and 2018. Student provides no facts in support of this issue. He fails to state what his special needs were, how District was aware of them, which District staff ignored his needs, and how District failed to consider them. Additionally, for the period prior to May 7, 2016, Student fails to give any supporting facts justifying an extension to the statute of limitations or supporting a statutory exception to it. Issue 12 is insufficient at plead.

In issue 13, Student contends that District's website states that its student study team meetings assess whether a child needs a special education assessment. Student then asserts that at three such meetings, District only once addressed whether Student should be assessed. Student also alleges that at that meeting, District dissuaded Parents from requesting an assessment and misrepresented Parents' statements. Student fails to state when the three meetings took place. He fails to state which District staff was at the meeting, who dissuaded Parents from asking for an assessment, or how this person or persons dissuaded Parents from requesting the assessment. For these reasons, issue 13 is insufficient as plead. Furthermore,

to the extent that the referenced meetings took place prior to May 7, 2016, Student fails to provide any factual basis for extending the statute of limitations, or for applying either of the two exceptions to it.

ORDER

1. Issue 2 and that part of issue 10 relating to Student's expulsion in Student's complaint are expedited issues and cannot be addressed in a motion for insufficiency. They therefore are deemed sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii). The expedited hearing shall proceed as scheduled.[3]

2. Issue 1 as to the period May 7, 2016, through May 7, 2018, and issues 3, 8, and 9 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

3. Issue 1 as to the period prior to May 7, 2016, issue 10 as to the non-expedited issues plead, and issues 4, 5, 6, 7, 11, 12, and 13, of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

4. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[4]

5. 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.

6. Student's expedited issues shall proceed to an expedited hearing as presently scheduled.

[3] On May 21, 2018, District filed a motion to un-expedite the expedited hearing issues. District's motion will be addressed separately from its notice of insufficiency.

[4] The filing of an amended complaint will restart the applicable timelines for a due process hearing, including the expedited issues for hearing.

7. If Student fails to file a timely amended complaint as to the non-expedited issues that have been found insufficient, the hearing shall proceed only on that portion of issue 1 raising allegations that occurred on or after May 7, 2016, and on issues 3, 8, and 9, of Student's complaint.

DATE: May 23, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings