

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA BARBARA UNIFIED SCHOOL
DISTRICT AND SANTA BARBARA
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2011080351

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On August 9, 2011, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Santa Barbara Unified School District (District) and Santa Barbara County Office of Education (COE) (jointly, Respondents).

On August 24, 2011, Respondents filed a Notice of Insufficiency (NOI) as to Student's complaint. Respondents allege that Student's complaint is insufficient because he fails to provide clear or adequate facts supporting his contention that the two year statute of limitations pursuant to the Individuals with Disabilities Education Act (IDEA) should be extended to encompass allegations spanning a twelve year period. Based upon the following analysis, Respondents' NOI is denied.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² 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 (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.³ 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.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ 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.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) Currently a request for a due process hearing “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.” (Ed. Code, § 56505, sub. (l).) This time limitation does not apply to a parent if the parent was prevented from requesting the due process hearing due to either: 1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or 2) the withholding of information by the local educational agency (LEA) from the parent that was required to be provided to the parent under special education law. (*Ibid.*, see 20 U.S.C. § 1415(f)(3)(D).) Common law or equitable exceptions to the statute of limitations do not apply to IDEA cases. (*P.P. ex rel. Michael P. v. West Chester Area School Dist.* (E.D. Pa. 2008) 557 F.Supp.2d 648, 661, 662.) A claim accrues for purposes of the statute of

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

limitations when a parent learns of the injury that is a basis for the action, i.e., when the parent knows that the education provided is inadequate. (*M.D. v. Southington Board 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 it has a legal claim. (*See El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039.)

School districts are required to provide parents of pupils deemed eligible for special education notice of procedural safeguards. Prior to July 1, 2005, the IDEA provided that a notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability at a minimum: 1) upon initial referral for assessment; 2) upon notice of an IEP meeting or reassessment of the child; or 3) when a request for due process was filed. (Former 20 U.S.C. § 1415(d)(1).) From September of 2003 through October 5, 2007, the Education Code provided that a notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability at a minimum: 1) upon initial referral for assessment; 2) upon notice of an IEP meeting or reassessment of the child; or 3) when a request for due process was filed. (Former Ed. Code, § 56301.) After July 1, 2005, the IDEA provided that a notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year and/or: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process hearing; or 3) upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a) (adding that a notice must also be given when an eligible student's placement is changed for violating a code of conduct).) From October 7, 2005 through October 9, 2007, the Education Code provided that a notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year and/or: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process hearing; or 3) upon parent request. (Former Ed. Code, § 56301, subd. (d)(2).)

School districts are required to provide parents prior written notice whenever the agency "proposes to initiate or change" or "refuses to initiate or change" the identification, evaluation or educational placement of the child. (20 U.S.C. § 1415(b)(3) & 34 C.F.R. § 300.503(a)). The notice must be in the parents' primary language. (20 U.S.C. § 1415(b)(4) & 34 C.F.R. § 300.503(c)). School districts are currently required to provide non-English speaking Parents IEP documents in their primary language upon request. (5 Cal. Code Regs, § 3040, subd. (b).)

DISCUSSION

Student requests that the statute of limitations be waived from 1999 forward on the ground that Mother was prevented from timely requesting a due process hearing because Respondents withheld information from Parent that they were required to provide under special education law. Student contends that the statute of limitations should be extended from April 22, 1999, to January 24, 2011, because Mother was not provided a translator at

“many” of Student’s IEPs, and was never provided translation of IEP notices, documents or assessments, and Parent’s procedural safeguards, until after January 22, 2011. As further discussed below, under the liberal pleading rules that govern the determination of a notice of insufficiency, Student’s complaint is sufficient.

Student’s thirty-page complaint contains an extensive factual chronology of his educational history from September 1998. According to the complaint, after being referred to a Student Study Team (SST) Student was also referred for psychological testing which occurred over a period of months. Student complains that Respondents committed ongoing procedural violations based upon their failure to provide documents to Mother, including assessment reports and IEPs, in her native language. From the complaint it is unclear when District convened its first IEP team meeting but after referencing a series of SST meetings, Student complains that at “another IEP meeting,” on October 10, 2001, Respondents failed to meet Student’s unique needs. According to the complaint, Student had a triennial psychoeducational evaluation on January 16, 2002, an annual IEP on January 24, 2002, and an IEP on September 18, 2002, where Respondents allegedly failed to meet Student’s language deficits. Student claims that the assessment data upon which the IEPs were based were not shared with Mother because the assessment was not provided to her in Spanish. The complaint continues in this fashion, detailing assessments that were not provided to Mother in Spanish.

In addition to Respondents’ failure to provide Mother assessments in her primary language, Student claims that Respondents failed to provide her with the required notification of IEP team meetings in her primary language. Mother failed to attend a February 5, 2008, IEP team meeting, allegedly because Respondents’ failed to provide her with the required notice in her primary language. Student also alleges that the IEP notice for the December 2008 meeting that Mother attended, was only in English. Respondents’ allegedly failed to provide Mother notice in her primary language of an IEP and manifestation hearing held during October 2009. Student also alleges that October IEP team meeting and a December 2008 IEP were possibly defective because the notes do not establish whether an interpreter was present. Student claims that she first was given notice of her procedural safeguards after the two year statutory period commenced.

In sum, based upon the factual averments in Student’s complaint, Respondents have the required notice of a description of the problem and the facts relating to the problem to defend Student’s claim for a waiver of the statute of limitations. The determination as to whether Student’s claim is legally valid, or whether the evidence supports a legally valid claim, or, if appropriate, the scope of the waiver, rests with the Administrative Law Judge assigned to the hearing.

ORDER

1. Student’s complaint is sufficiently pled under Title 20 United States Code section 1415(b)(7)(A).

2. All dates remain as calendared.

Dated: August 29, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings