BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ALISAL UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2021010031

ORDER DETERMINING DUE PROCESS COMPLAINT INSUFFICIENT IN PART

JANUARY 20, 2021

On January 4, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Alisal Union School District, called Alisal Union. Student's complaint consisted of three issues and also requested to extend the two-year statute of limitations.

On January 19, 2021, Alisal Union filed a Notice of Insufficiency as to the complaint and alleged that:

- Student's issue one is vague to the extent it alleges disability harassment;
- Student's issue two is vague as to time and specificity; and
- Student failed to properly plead the statute of limitations issue.

ALISAL UNION FILED A TIMELY 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). The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

Here, Student filed a complaint on January 4, 2021, and Alisal Union filed a notice of insufficiency on January 19, 2021, 15 days later. Thus, Alisal Union's notice of insufficiency was timely filed.

STUDENT'S ISSUE ONE IS SUFFICIENT

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; (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.) 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.) .)

Here, Student's issue one is titled "Substantive FAPE Violation" under the heading, and parses out sub-issues as summarized below:

a. respondent failed its duty to comply with the child find requirements denying Student a free appropriate public education, called FAPE;
b. respondent failed to properly evaluate the Student within a reasonable amount of time after it because aware of his functional performance, social, emotional, and behavioral needs, and academic failure, denying him a FAPE;
c. Student meets the special education criteria for other health impairment for anxiety and attention deficit hyperactivity disorder, and specific learning disability; and
d. respondent failed to appropriately train teachers and staff under the child find requirements and denied Student a FAPE.

Student further alleged the 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years as the applicable time period for Student's issue one.

Here, Student described issue one and the accompanying sub-issues with adequate related facts. 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.].) Thus, Student's issue one is sufficient.

STUDENT'S ISSUE TWO IS INSUFFICIENT

Student issue two is titled "Substantive FAPE Violation" and alleges that Alisal Union: failed to provide a safe, non-hostile learning environment for Student; failed to offer supports, services, or mental health counseling; and should have conducted a mental health assessment. However, Student failed to set forth any time period for all of the alleged violations except for a notation that Alisal Union should have been aware of Student's mental health problems since April 26, 2017. This, however, does not address the hostile learning environment allegation. This is particularly confusing given the fact that Student specifically pled six school years in issue number one. Because of this, the complaint fails to state sufficient facts that give Alisal Union an awareness and understanding of issue two such that can be used to prepare for a resolution session, mediation, and hearing. Thus, the complaint is insufficiently pled as to issue two.

STUDENT'S STATUTE OF LIMITATIONS CLAIM IS SUFFICIENT

Alisal Union argues that Student failed to set forth any facts related to any misrepresentations or withholding of any information, making the statute of limitations issue improper and insufficient.

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 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.)

In *Avila v. Spokane School District 81*, (9th Cir. 2017) 852 F.3d 936 (*Avila*), the Ninth Circuit held that the two-year statute of limitations for filing a request for due process pursuant to the Individuals with Disabilities Education Act begins when a parent "knew or should have known about the alleged action that forms the basis of the compliant." (*Avila*, at p. 944.) At that point, parents have two years to file their request for due process. (20 U.S.C. § 1415(f)(3)(C) and 1415(b)(6)(B).)

Here, Student stated in his complaint that parent did not have knowledge and should not have had knowledge about the alleged actions that formed the basis of the complaint until December 2020, when counsel was contacted. Thus, Student pled the discovery rule and did not need to plead any exceptions to the statute of limitations. Accordingly, Student sufficiently pled the statute of limitations claim.

ORDER

1. Issue one and the statute of limitations claim in Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue two of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. 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. The filing of an amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on issues one, issue three, and the statute of limitations.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings