BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NEWMAN-CROWS LANDING UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020120626

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

FEBRUARY 1, 2021

On December 17, 2020, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Newman-Crows Landing Unified School District, called Newman-Crows. On December 28, 2020, Newman-Crows filed a Notice of Insufficiency as to the complaint. On December 29, 2020, OAH found Student's complaint insufficient as to issues two, three, four, five, and six.

On January 13, 2021, Student timely filed a First Amended Complaint. On January 26, 2021, Newman-Crows timely filed a Notice of Insufficiency as to Student's First Amended Complaint. On January 28, 2021, Student filed opposition to Newman-

Crows Notice of Insufficiency. On January 29, 2021, Newman-Crows replied to Student's opposition.

APPLICABLE LAW

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; (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. (*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.)

DISCUSSION

Student's complaint is 63 pages in length and alleges eight issues. The Notice of Insufficiency is for issues one through six, and the statute of limitations claim.

STUDENT'S STATUTE OF LIMITATIONS CLAIM IS SUFFICIENCT.

Newman-Crows argues that Student failed to set forth adequate facts to support this claim, making it improper and insufficient. Student disagrees.

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 set forth a section in his First Amended Complaint titled "Statute of Limitations." Included in this section is 15 separate assertions of misrepresentations or withholding of evidence by Newman-Crows. Each allegation includes the school years and facts specific to the individual event. The Statute of Limitations claim provides sufficient facts such that Newman-Crows would be able to participate in a resolution session, mediation, and prepare for hearing. The Statute of Limitations claim is sufficient.

ISSUES ONE THROUGH SIX ARE SUFFICIENTLY PLED.

Newman-Crows asserts that Student's Issues One through Six are insufficient for failure to provide sufficient facts, specific dates, events, names, and information regarding extending the statute of limitations as it relates to individual issues. After review of Student's First Amended Complaint, the undersigned administrative law judge finds Student's First Amended Complaint, Issues One through Six, sufficient.

Issue One asserts that Newman-Crows denied Student a free and appropriate public education, called FAPE, by failing to provide Student with all his educational records. Here, Student provided specific dates of the alleged violations with accompanying supporting facts. Issue Two relates to a denial of FAPE due to child find and failure to assess in all areas of suspected disability. For Issue Two, Student listed specific school years and the types of assessment at issue. Issue Three alleges a denial of FAPE by failing to offer appropriate and annual goals, and Student lists particular individual education program dates, goals, and examples. Student's Issue Four contends that Newman-Crows failed to deliver and implement Student's services. Here,

Student lists the school years in relation to the specific service or goal, with supporting individual facts for each sub-issue. Issue Five asserts a denial of FAPE by unilaterally exiting Student from special education services and predetermining that Student was not eligible for special education. Student then sets forth the specific service and school year Student was denied a FAPE. Further, Student names the school years that Student was not eligible for special education with additional facts describing the basis for the violation. In regard to Issue Six, Student alleged Newman-Crows denied Student a FAPE when it failed to make appropriate offer of supports, services, instruction, and placement. Student further parses out this issue with subsections that includes the specific school years and additional individual facts related to each. Thus, Student's Issues One through Six are sufficient.

Further, Newman-Crow argues throughout its motion that Student's First Amended Complaint is insufficient because he failed to provide facts associated with each issue for extending the statute of limitations. Newman-Crows, however, provided no authority that this is required.

The IDEA requires only a "description of the nature of the problem, " facts related to the problem and proposed resolutions to the extent known and available at the time (20 U.S.C. (b)(7)(A)(ii), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings. Thus, Student's First Amended Complaint provides the sufficient notice and accompanying supporting facts, such that Newman-Crows would be able to participate in a resolution session, mediation, and prepare for a hearing. Accordingly, Student's Issues One through Six are sufficient.

ORDER

1. The statute of limitations claim is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Student's Issues One, Two, Three, Four, Five, and Six are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings