BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BANTA UNIFIED SCHOOL DISTRICT AND NEXTGENERATION STEAM ACADEMY.

OAH CASE NUMBER 2023090717

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

OCTOBER 9, 2023

On September 20, 2023, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH, naming Banta Unified School District and Next Generation Steam Academy. On October 5, 2023, Banta Unified School District and Next Generation Steam Academy filed a notice of insufficiency.

BANTA UNIFIED SCHOOL DISTRICT AND NEXTGENERATION STEAM ACADEMY 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, Banta Unified School District and NextGeneration Steam Academy filed a timely notice of insufficiency.

STUDENT'S COMPLAINT IS SUFFICIENTLY PLED.

Student alleges eight issues and requests a waiver of the two-year statute of limitations in this matter. Banta Unified School District and NextGeneration Steam Academy contend Student's complaint is insufficient on four bases.

1. The claim in Student's complaint alleging a failure to provide an interpreter or translated documents entitles Student to an exception to the statute of limitations is insufficiently pled;

2. The claim that the alleged failure to produce "legal IEPs" and other records to Student's attorney entitled Student to an exception to the statute of limitations is insufficiently pled;

3. The claim that Student is entitled to the exception to the statute of limitations based on purported "misrepresentations" is insufficiently pled; and,

4. Student's issue 8 is insufficiently pled because Student admitted in the complaint that these claims are not within OAH's jurisdiction.

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 considering 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.)

STUDENT'S ISSUE REQUESTING WAIVER OF THE STATUTE OF LIMITATIONS IS SUFFICIENCTLY PLED.

Student's issue regarding the statute of limitations is sufficiently pled. 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 Sch. District 81* (9th Cir. 2017) 852 F.3d 936, referred to *Avila*, the Court found that the Individuals with Disabilities Education Act's statute of limitations, referred to as the IDEA, barred claims that were filed more than two years after the time parents "knew or should have known" about the actions forming the basis for their complaint. (*Id*. at pp. 937, 945.) The Court held that, in the IDEA's statute limitations provision, Congress intended to enact a "discovery rule," not an "occurrence rule." (*Id*. at pp. 939-945.)

Here, Student alleges that the respondents never provided Parents with interpreters, IEP documents, assessment plans, assessment reports, prior written notices, or procedural safeguards in Student's native language. Further, without this information and a translator at the IEP team meetings, Parents had no way of understanding what

respondents were discussing and proposing for Student's education. Additionally, Student alleges that respondents misrepresented Student's functioning, services, placements, IEP procedure and process such that Parents did not know the basis of their claims, or that they had claims and the right to make claims. Thus, Student provided sufficient information regarding the basis upon which Student seeks to extend the statute of limitations and supporting facts so that the respondents could prepare for mediation, due process hearing, and defend itself.

While respondents make several arguments as to why this information cannot prove an exception to the statute of limitations and that Student failed to cite to any legal authority supporting his arguments, these are questions of fact that require a determination through an evidentiary hearing on the merits. Thus, Student's statute of limitations issue is sufficiently pled.

STUDENT'S ISSUE EIGHT IS SUFFICIENCTLY PLED.

Student's issue eight is sufficiently pled as it states allegations under section 504 of the Rehabilitation Act, the ADA, Title VI, and other related civil rights statutes with adequate supporting facts. Although Student admits that these claims were brought for exhaustion purposes, this does not make the claims insufficient. Student also requests that issue eight be dismissed due to OAH's lack of jurisdiction but respondents must file a different motion seeking this remedy.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

2. 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