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 INSUFFICIENCY OF DUE PROCESS COMPLAINT

DECEMBER 29, 2020

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. On December 28, 2020, Newman-Crows timely filed a Notice of Insufficiency as to the complaint.

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 60 pages in length and alleges eight issues. The notice of insufficiency is for Issues One through Six.

ISSUE ONE IS SUFFICIENTLY PLED

Issue One asserts that Newman-Crows denied Student a free and appropriate public education by failing to provide Student with all his educational records within the statutory timeline. Issue One provides sufficient information to put Newman-Crows on notice of the problem and the facts associated with the problem. Issue One alleges Newman-Crows denied Student a FAPE during the 2020-2021 school year and alleges specific dates, events and individuals, such that Newman-Crows would be able to participate in resolution sessions and mediation and prepare for a hearing. Issue One sufficiently provides facts so Newman-Cross may prepare its response.

ISSUES TWO THROUGH SIX ARE INSUFFICIENTLY PLED

Student claims in Issues Two through Six that Newman-Crows denied Student a FAPE beyond the two-year statute of limitations. The statute of limitations for special education due process claims in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) The statute of limitations operates to bar claims based upon facts outside of the two-year period.

Student's complaint begins with a 10-page summary of facts. This is followed by a section entitled "Statute of Limitations," essentially a legal argument, wherein Student purports to cite the law, applicable in California, regarding the tolling of and exceptions to the statute of limitations. Student then lists a page and a half of 13 acts of allegedly willful and/or negligent misrepresentations or withholding of information that Newman-

Crows allegedly made to Parent, in support of Student's claim of statutory exceptions to the statute of limitations. One of the assertions refers to a school year. The remaining 12 are undated and therefore unclear as to when they occurred. None of the assertions are associated with any of the eight asserted legal issues. Student's complaint generally asserts that Newman-Crows willfully and wantonly withheld information and documents, and made misrepresentations, that entitle Student to seek redress beyond the statute of limitations.

For example, Issue Two asserts that Newman-Crows did not meet its child-find duty by failing to timely and properly assess Student, beginning with the 2011-2012 school years. Issue Two alleges facts associated with the denial of FAPE, but does not allege any period of time, dates, individuals or events associated with Student's asserted right to make claims beyond the two-year statute. Instead, Student states at the end of each subsection that predates the two-year statute, "As such, Parent requests a waiver of the two-years statute of limitations in this matter." Issues Three through Six similarly assert facts in support of a claimed denial of FAPE, but also fail to allege dates, individuals or events associated with Student's asserted right to make claims beyond the two-year statute. Issues Two through Six are too vague and confusing as to Student's alleged waiver of the statute of limitations to provide Newman-Crows sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

Student seeks remedies for FAPE denial that begin nine years before the complaint's filing. Student assumed the burden of pleading facts that entitle Student to pierce the two-year limitations statute. However, Student's general assertions of culpable acts, without specifying the dates and legal issues to which they apply, do not sufficiently describe the problem and provide facts that would entitle Student to make

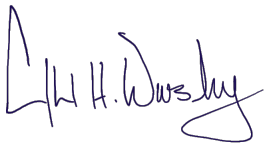
pre-statute claims. A school district is entitled to know the allegations a student is making so that it may be able to respond and prepare its defense. Here, the complaint does not provide information that would enable Newman-Crows to know how to prepare for the hearing and how to participate in resolution sessions and mediation, relative to Student's claims for relief beyond the statute of limitations. Therefore, Student has failed to state sufficient facts in support of his claims for relief which predate the statute of limitations. Issues 2 through 6 of Student's complaint are insufficiently pled.

ORDER

1. Issue One of Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues Two, Three, Four, Five, and Six of Student's complaint are 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 Student's claims for relief that fall within the two-year statute of limitations.

IT IS SO ORDERED.



Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings