BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TWIN RIVERS UNIFIED SCHOOL DISTRICT AND NATOMAS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017090154 ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

On September 1, 2017, Student filed a Due Process Hearing Request with the Office of Administrative Hearings naming Twin Rivers Unified School District and Natomas Unified School District.

On September 15, 2017, Twin Rivers timely filed a Notice of Insufficiency as to Student's complaint. Twin Rivers argues that Student's issues 1 through 3 lack critical details necessary for it to mount an effective defense. Specifically, although Student attended Twin Rivers and Natomas during different school years, Student refers to both respondents as "district" and does not differentiate as to which district engaged in the challenged conduct, or include facts specific to the relevant time frame those acts were allegedly committed.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (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 the Office of Administrative Hearings 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).)

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 to the child; (2) facts relating to the problem; and (3) a proposed resolution

of the problem 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.)

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, subd. (1).) The two-year limitations period 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 from the parent that was required to be provided to the parent under special education law. (*Ibid*.) Invoking the exceptions to the statute of limitations requires a showing that the school district's misrepresentation or withholding of information caused the failure to file the due process complaint on time. (See, *M.M. v. Lafayette School Dist.* (9th Cir. 2014) 767 F.3d 842, 859.) Thus, where the evidence shows that the parents were fully aware of their procedural options, they cannot excuse a late filing by pointing to the school's failure to formally notify them of those options. (*D.K. v. Abington School Dist.* (3d Cir. 2012) 696 F.3d 233, 246-247.)

DISCUSSION

Student's complaint alleges four issues, the first three of which are all insufficiently pled because they fail to provide Twin Rivers with the required notice of a description of the problems and the facts relating to the problems.

In issue one, Student alleges that "District" "failed in its 'Child Find" obligation by failing to refer Student for a comprehensive special education assessment when Student's

academic struggles indicated that Student was in need of special education services." Student fails to state sufficient facts supporting this claim, and therefore the claim is insufficient. Specifically, Student has failed to identify "District," and during what time period Twin Rivers violated its child find obligations by failing to assess him for purposes of issue one. Student's issue is framed as beginning at the time he demonstrated academic struggles; however, Student's struggles are alleged to have begun in first grade and it appears he was initially assessed for special education by Twin Rivers sometime in 2014. The complaint alleges Student is currently in the seventh grade, and there are no allegations in the complaint which would permit a determination of issues based on conduct which occurred prior to September 1, 2015.

In issue two, Student alleges that "District" denied Student a FAPE by failing to complete a comprehensive functional behavior assessment. Again, Student has failed to identify which "District," and during what time frame Twin Rivers allegedly failed to assess Student in the area of functional behavior for purposes of issue two. In paragraph 11, Student alleges "District" should have conducted a functional behavior assessment pursuant to his initial assessment, which Student states in paragraph 6 was conducted sometime in 2014. It is unclear if Student is referring to Twin Rivers; and if so, there are no allegations which would permit a determination of issues based on conduct which occurred prior to September 1, 2015. Student fails to state sufficient facts supporting this claim, and therefore the claim is insufficient.

In issue three, Student alleges that "District" denied Student a FAPE by failing to complete an educationally related mental health services assessment. Issue three is defective for the same reasons as issue two. Student failed to identify which "District," and during what time frame Twin Rivers allegedly failed to assess Student in the area of educationally related mental health for purposes of issue three. Student alleges "District" should have conducted such an assessment pursuant to his initial assessment in 2014, but it is unclear if Student is referring to Twin Rivers; and if so, there are no allegations in the complaint which would permit a determination of issues based on conduct which occurred which prior to September 1, 2015.

In issue four, Student alleges "District" denied Student a FAPE by failing to assess Student in all areas of suspected disability pursuant to his May 2017 psychoeducational assessment. Although Student once again alleges that "District" failed to appropriately assess him, it is clear from the complaint that this claim is made only against Natomas, not Twin Rivers, in that Student alleges that only Natomas assessed Student in May 2017.

With regard to the resolutions, a complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined. Student's proposed resolutions request 240 hours of compensatory education, and independent educational evaluations in the areas of psychoeducation, functional behavior and mental health. Student has met the statutorily required standard of stating a resolution.

ORDER

1. Student's complaint is insufficiently pled as against Twin Rivers under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[1]

3. 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.

4. If Student fails to file a timely amended complaint, Twin Rivers will be dismissed and the hearing shall proceed as against Natomas unless otherwise ordered.

DATE: September 20, 2017

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings

[1] The filing of an amended complaint will restart the applicable timelines for a due process hearing.