BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PANAMA-BUENA VISTA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018120461 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 13, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Panama-Buena Vista Unified School District. On December 26, 2018, Panama-Buena Vista filed a notice of insufficiency as to Student's complaint. On December 27, 2018, Student filed a response to the notice of insufficiency. On December 27, 2018, Panama-Buena Vista filed a reply to Student's response to the notice of insufficiency, correctly stating that there is no provision requiring a party to respond to a notice of insufficiency, and providing additional reasons for finding the complaint insufficiently plead.

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).

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

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

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 alleges 10 issues in her 23-page complaint, all of which are insufficiently pled as discussed below. Student begins the complaint by stating the names and addresses of the parties and the name of the school Student now attends. Student then proceeds to a section titled "Legal Standard and Jurisdiction." This section of the complaint is more than five pages long, and contains some history of Student's education and general statements of special education law. One section cites *Avila v. Spokane School District 81* (9th Cir. 2017) 852 F.3d 936, as support for Student making claims beyond the two-year statute of limitations. Student then, beginning on page 8, begins a section titled "Issues Statement" and lists 10 issues. In the Statement of Issues, no dates are stated as to when any acts or omissions on Panama-Buena Vista's part occurred that led to a specific claim.

Following the Statement of Issues, Student starts a section titled "Educational History and Statement of Facts," on page 11 of the complaint, and then proceeds to describe a few events for each school year beginning with the 2015-2016 school year and ending with the 2018-2019 school year. There is no indication as to which issues are related to each school year, or which facts are related to which issue. Several pages related to the 2018-2019 school year refer to findings in several assessments that were conducted in the fall of 2018. However, there is nothing in these pages that shows what issues these allegations pertain to.

Issue "a" states "Did the District fail to conduct a timely, full, and complete initial evaluation ensuring [Student] was assessed in all areas of suspected disability pursuant to [statutory citations omitted], and if so, did the District's failure deny Free Appropriate Public Education and/or amount to a deprivation of educational benefit?" Student then states a "proposed answer," which is "Yes." Student then proceeds to state Issues "b" through "i"

which are similarly framed. Issue "j" states, "Other issues as discovered once a full records review occurs."

Student's Issue "b" is an allegation that Panama-Buena Vista failed to meet its child find obligations. However, there is no statement as to which school years this issue pertains to. Issues "c" and "d" are claims that Panama-Buena Vista failed to offer Student an IEP with multiple types of possible services and possible placements listed, and thus denied her a FAPE. Again, as previously noted, no time period is referenced for either issue. Issue "e" is a claim that Panama-Buena Vista failed to offer a continuum of placement options, again with no time period named, and again this is a claim that could be part of a specific claim that Panama-Buena Vista should have offered Student an IEP with specific services and an appropriate placement. Student's Issue "f" is a claim that Panama-Buena Vista failed to provide prior written notice to Parent, but again no time period is listed, nor the circumstances that gave rise to the claim, even in the next section of the complaint. Student's Issues "g," "h," and "i" are additional claims related to the alleged failure of Panama-Buena Vista to provide Student with an IEP. Again no time periods are listed nor any facts provided that would explain why Student needed an IEP, and what such an IEP would need to contain and why.

In her opposition, Student argues that she is not required to provide the specificity Panama-Buena Vista is requesting, and claims that OAH's form complaint (which Student did not complete, and is not required to complete) would result in even less information being provided as to the issues. This is not true. The OAH form requires a party to state a problem (issue), provide facts related to that problem, and then provide a proposed resolution to the problem. Then the party proceeds to state the second problem, facts related to that problem, and a proposed resolution. Student's issue "a" as stated could be construed to be an allegation that Panama-Buena Vista did not meet its child find obligations, and if this was the case, it would be sufficiently pled if after stating the issue, she gave the time period during which she believes Panama-Buena Vista failed to conduct an initial assessment, and what facts existed during that time period that should have led Panama-Buena Vista to suspect Student might be a child with a suspected disability who it should have assessed in certain specific areas. Or if Student's Issue "a" is related to the 2018 assessments that Panama-Buena Vista conducted, there should be facts asserted as to which assessments were untimely and why, and/or which assessments were believed to be incomplete and why, and/or what areas of suspected disability should have been assessed and were not. The OAH complaint form instructions state, "Federal and state law require you describe with specificity the nature of the problem(s)/complaint(s). Simply describing a problem as 'Student denied a FAPE school year 2005-2006' is insufficient. Include facts, dates, references to specific IEP provisions, etc. Lack of specificity in identifying problem(s)/complaint(s) may result in the dismissal of this Due Process Hearing Request."

Unfortunately, the structure of Student's complaint, the lack of dates pertaining to each issue, and the lack of specific facts being tied to a specific issue does not provide Panama-Buena Vista with the requisite notice it requires to know how to prepare for the

hearing and how to participate in resolution sessions and mediation. Student's complaint is insufficiently pled.

ORDER

1. Student's complaint is insufficiently pled 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).[2]

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, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

DATE: December 27, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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