BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. COTATI-ROHNERT PARK UNIFIED SCHOOL DISTRICT AND LATTICE EDUCATIONAL SERVICES.	OAH Case No. 2016020449 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 5, 2016, Parents on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request[1] (complaint) naming Cotati-Rohnert Park Unified School District (Cotati) and Lattice Educational Services.[2]. On February 12, 2016, Cotati filed a Notice of Insufficiency as to Student's complaint.

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 mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

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[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).

[2] Lattice is a nonpublic school.

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 pro se complaint alleges five problems in the complaint, some of which are sufficient and some which are insufficient. The issues are discussed below.

The problems are entitled, in order: contentious action-refusal to accommodate, refusal to accommodate, refusal to accommodate, refusal to accommodate, and contentious action. In reading the complaint as a whole, it is obvious that all five problems relate to school year 2015-2016.

Cotati contends that none of the alleged problems are sufficient because of a lack of sufficiently alleged facts to permit Cotati to be able to prepare a defense to the matter. Specifically, Cotati avers that Student has failed to identify which needs of Student are not being met and why; failed to identify what specific Individualized Education Program is at issue; and how any of the allegations relate to a proposed initiation or change concerning the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education.

Problems three and four are sufficiently pled to put Cotati on notice as to the basis of Student's claims. With regard to problems two and five, Student fails to allege sufficient facts as to the basis of Student's claims to put Cotati on notice of the basis for Student's claim. As to problem one, it is sufficient as to all allegations to put Cotati on notice as to the basis of Student's allegations except as to the allegation regarding the report to CPS.

Problem one alleges that on August 19, 2015, the first day of school for the 2015-2016 school year, Student attended Rancho High School, a Cotati school. Because Student urinated on himself, Cotati official reported to Child Protective Services that Student may be a victim of child abuse. Student also alleges that his assigned one-to-one aide was ineffectual which resulted to Cotati changing Student's placement to a nonpublic school, Lattice, on October 14, 2015. Student contends that the Lattice placement was made against

the consent of Student's parents. Student contends that the placement change was premature as Student's medications were changed to reduce his anxiety at school. As to the allegation regarding the report to CPS, Student fails to allege how this specific allegation relates to a proposed initiation or change concerning the identification, evaluation, educational placement or the provision of FAPE by Cotati. This portion of problem one is not sufficiently pled. As to the remainder, problem one adequately contends that Student was denied FAPE because (a) his aide services were not appropriately implemented, and (b) the October 14, 2015 change in placement was not appropriate. Problem one makes Cotati aware of the problem being alleged so as to prepare its defense and to participate in a resolution session and/or mediation.

Problem two alleges Lattice refuses to implement Parents' request to not permit Student to hold toys that adversely affects his ability to maintain attention, which prevents Student from learning. Student fails to allege any facts as whether Student's IEP contained any such provision. Additionally, Student fails to make any allegation specific to Cotati. Thus, Cotati is unaware of what is being alleged against it.

Problem three alleges that Student's behavioral services are not appropriate in that Student is being served by three aides and not a single one-to-one aide. Student alleges that he is being denied a FAPE because his aide service is not being appropriately implemented. Even though a specific IEP is not mentioned, it is clear that the IEP being referred to is the IEP being implemented for the 2015-2016 school year. Cotati again is aware of what is being alleged and has sufficient information to understand the issue.

Problem four is related to problem two. Here, Student alleges that his behavioral services are not being appropriately implemented since he is being allowed to pick up stuff and hide them in his pocket which may cause injury to him. Cotati is aware and understands what is being alleged by Student.

Problem five alleges that Cotati and Lattice have reported Student to CPS on August 19, 2015 and again on January 6, 2016. Student contends that Cotati is "triangulating CPS into this conflict in an attempt to force their agenda." Student fails to allege how this allegation relates to a proposed initiation or change concerning the identification, evaluation, educational placement or the provision of FAPE by Cotati. Thus, Cotati is without an understanding how the reporting to CPS has denied Student a FAPE. This issue is not sufficiently pled.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Problems three, four and part of one, relating to the aide and placement change, of Student's complaint are sufficient as to Cotati under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Problems two, five, and that portion of one, regarding the report to CPS, of Student's complaint are insufficiently pled as to Cotati 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).[3]

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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Problems three, four and part of one of Student's complaint, relating to the aide and placement change, as to Cotati.

DATE: February 16, 2016

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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