BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NATOMAS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018090651 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On September 17, 2018, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings naming Natomas Unified School District. On October 2, 2018, Natomas 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).

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.)

DISCUSSION

Student's complaint was filed on September 17, 2018, and Natomas filed a Notice of Insufficiency on October 2, 2018. Thus, Natomas' Notice of Insufficiency was timely filed.

Student's two and one-half page complaint alleges seven issues, one of which is sufficient and the remainder of which are insufficient. The issues are discussed below.

With respect to issue number one, Student contends that she should not have been placed in a self-contained special day class and instead should have been in a less restrictive environment. Student, however, fails to allege when this took place, who placed her, how this took place, and the IEP date this relates to. Student's issue number one is insufficient.

Issue number two states that Student's placement was changed without Parent input and outside of the IEP process. Further, Parent was given signature pages without the remaining IEP attached. Again, Student fails to allege facts including when this took place, and what IEP team meeting Parent was unable to participate in. Thus, Student's issue number two is insufficient.

Regarding issue number three, Student argues that Natomas failed to follow through or complete a transition plan. Student's allegations are vague and broad. What transition plan is Student referring to, what IEP, and what facts support that the transition plan was incomplete or in what manner Natomas failed to follow through. Consequently, issue number three is insufficient.

Issue number four alleges that Natomas failed to hold an annual IEP team meeting during Student's twelfth grade year, and graduated her with a diploma that she did not earn. Student alleged sufficient facts to put Natomas on notice of the facts forming the basis of the complaint. Issue four is sufficiently pled.

In relation to issue number five, Student states that her growth and development was "retarded" by the special day class placement. Student, however, fails to support this

statement with any facts in order for Natomas to understand and have any awareness of this issue. Therefore, issue number five is insufficiently pled.

Issue number six states that Student requested an independent educational evaluation on or about March 20 2018, and it was not received. Student, however, failed to state in what area the request was made which makes it vague and insufficient.

In regard to issue number seven, Student alleges that her property was damaged or destroyed at school by others. Again, Student fails to support this allegation with any facts or specificity in relation to time and circumstances in order to determine when this happened, what property she is referring too, and how this allegation relates to the IDEA. Accordingly, issues number seven is insufficient.

Natomas should not have to guess when these allegations took place. There are few specific violation dates and no IEP dates to otherwise notify Natomas of such. Further, the complaint is devoid of the required facts relating to the problem. Student's broad and vague complaint provides little, if any, information to know how to prepare for the hearing and how to participate in a resolution session and mediation. Moreover, it is difficult to determine if some allegations assert actionable claims under the IDEA or state law. And, it fails to provide Natomas with the required notice of a description of the problem and the facts relating to the problem.

Thus, the Student's complaint is insufficiently pled as to claim numbers one, two, three, five, six, and seven. Claim number four is sufficient.

ORDER

1. Student's issue number four is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Student's complaint is insufficiently pled under tile 20 U.S.C. section 1415(c)(2)(D) as to issues numbered one, two, three, five, six, and seven.

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

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.

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[1] 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 on issue number four of Student's complaint.

DATE: October 8, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings