BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NAPA VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019020953 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 19, 2019, Student filed a due process hearing request (complaint) with the Office of Administrative Hearings naming Napa Valley Unified School District. [1] On March 6, 2019, Napa Valley 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

[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). Student mailed the complaint to OAH on February 15, 2019, and OAH received the complaint on February 19, 2019, so that is the date the complaint is deemed to have been filed with OAH.

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 Individuals with Disabilities Education Act 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

In its notice of insufficiency, Napa Valley states that it did not receive the complaint until February 19, 2019, the same date OAH received the complaint, and the proof of service attached to the complaint states that the complaint was mailed to Napa Valley on February 15, 2019. Therefore, the notice of insufficiency was timely filed.

Student's complaint states 21 separate claims under the heading "Complaint Issues." Student claims she was denied a FAPE by Napa Valley due to its conduct in relation to each of these issues. This section of the complaint is preceded by approximately three pages of Parent's statement, a narrative that is intended to provide a history of Student's education and problems as a student of Napa Valley during the time period at issue. Student asserts that she was bullied, and this resulted in her engaging in maladaptive behaviors. Instead of conducting a functional behavior assessment, developing a behavior plan, and providing Student with an aide to implement the behavior plan, Student claims Napa Valley developed one or more IEP's that placed her on home/hospital instruction. As previously noted, pleading requirements for due process complaints 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. Student's claims are related to the 21 issues. Numerous extraneous facts were also included in each issue. While some of the issues are duplicative of others, all but one, Issue 5, are sufficiently plead. A summary of each issue follows. To the extent that the summary represents the issues pled, they are deemed sufficient.

Student's Issue 1 is a claim that Napa Valley failed to meet its child find obligations "during the 2016-2018 school years." Student claims that Napa Valley had an obligation to

conduct a functional behavior assessment and develop a behavior plan for her during the time period at issue.

Student's Issue 2 is a claim that Napa Valley incorrectly identified her has a student with emotional disturbance.

Student's Issue 3 is a claim that Parent was denied meaningful participation in the individualized education program development process for Student because Napa Valley did not timely provide Parent with information such as assessment results so she could make informed decisions during the IEP process.

Student's Issue 4, as stated, is a claim that Napa Valley "predetermine[d] the outcome of each and every IEP meeting without parent involvement over the past two-years[.]"

Student's Issue 5 is a claim that Napa Valley never "considered or discussed" a continuum of placements. Student continues by claiming that Napa Valley "put her in situations where she was likely to misbehave and be punished for her disability." Following this statement is an allegation that Student was not given appropriate goals and services, but no information is given as to what kind of goals should have been developed, and what kind of services should have been provided. It is unclear whether this issue is about a lack of discussion about the continuum of placements, or a failure to develop appropriate goals for Student. Thus, the information given is insufficient to allow Napa Valley to prepare for the hearing, and participate in a resolution session and/or mediation related to this issue. Accordingly, Student's Issue 5 is insufficiently plead.

Student's Issue 6 is a claim that Napa Valley did not provide her with specialized academic instruction that would meet her unique needs.

Student's Issue 7 is a claim that Napa Valley should have conducted a behavior assessment and developed a behavior plan for Student to address her maladaptive behaviors.

Student's Issue 8 is a claim that Napa Valley failed to give Parent prior written notice when it refused to assess Student.

Student's Issue 9 is a claim that Napa Valley failed to give Parent appropriate prior written notice when Parent made requests concerning the assessment of Student, services she needed to ride the bus, and services to transition from class to lunch.

Student's Issue 10 is a claim that the IEP's Napa Valley developed did not contain adequate information about Student's levels of performance, and appropriate goals. Student claims that this resulted in IEP's that lacked appropriate services and supports, and accommodations and modifications that were related to the levels of performance and goals.

Student's Issue 11 is a restatement of Issue 7, failure of Napa Valley to conduct a behavior assessment and develop a behavior plan,

Student's Issue 12 is a restatement of Issue 10 and alleges Napa Valley failed to develop behavior goals.

Student's Issue 13 is a claim that Napa Valley did not provide Student with "a safe and appropriate learning environment" from 2016 to 2019.

Student's Issue 14 is a claim that Napa Valley did not "provide Student with appropriate supports and services to address a bullying problem" when she was attending school.

Student's Issue 15 is a claim that Napa Valley failed to convene IEP team meetings from 2016 to 2019 to address "the impact of bullying on the Student's educational participation and performance . . . at school."

Student's Issue 16 is a claim that Napa Valley "fail[ed] to offer Student a bullying response plan or 1:1 behavioral tutoring[.]" Below the statement of the issue is a claim that Napa Valley refused Parent's requests for a one-to-one aide for Student without providing prior written notice. Student claims this resulted in behavioral issues.

Student's Issue 17 is a claim that Napa Valley failed to develop an IEP for Student to address her alleged behavioral issues from 2016 to 2019.

Student's Issue 18 is a claim that Napa Valley did not provide Parent with "adequate progress reports regarding Student's unique functional and behavioral needs" from 2016-2019.

Student's Issue 19 is a claim that from 2016 to 2019 Napa Valley did not provide Parent with "accurate and appropriate assessment results" regarding Student.

Student's Issue 20 is a claim that Napa Valley "predetermine[d] that Student's disabilities were academic and not behavioral in nature[.]"

Student's Issue 21 is a claim that Napa Valley denied Parent meaningful participation in the IEP process because it did not give her information she needed to provide "informed consent" to the IEP's that were developed during the "2016-2019 school years."

Some of the 21 issues are duplicative of others, but given the liberal pleading standards, it is clear the issues are related to Student's belief that she was bullied in school, and this resulted in her engaging in maladaptive behaviors. Student claims Napa Valley should have conducted a behavioral assessment, developed a behavior plan, and provided her with a behavioral aide. Instead, Student claims, Napa Valley developed one or more IEP's that placed her on home/hospital instruction. Although Student fails to provide dates and specifics regarding the events, IEP team meetings, and Parent requests that are related to the 21 issues, sufficient information is provided to Napa Valley with the required notice of a

description of the problems and the facts relating to the problems. The information provided is sufficient to permit Napa Valley to prepare for a due process hearing participate in a resolution session and mediation. The issues can be further clarified during the PHC.

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. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii), with the exception of Issue 5.

2. The prehearing conference and hearing dates in this matter are confirmed.

3. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to Issue 5.

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

5. 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.

DATE: March 8, 2019

DocuSigned by:
Rebecca Freie
D1AE8D9E81A848C...

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.