BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>NATOMAS UNIFIED SCHOOL DISTRICT. | OAH CASE NO. 2012120326<br><br>ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT, AND DENYING MOTION TO DISMISS AS MOOT |

On December 7, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request[1] (complaint) naming the Natomas Unified School District (District).

On December 12, 2012, Attorney Illeana Butu, representing the District, timely filed a Notice of Insufficiency (NOI) as to Student's complaint as well as a Motion to Dismiss.[2]

## APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[3] 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).

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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 United States Code section 1415(b)(7)(A).

[2] The District requests an order of dismissal on the ground that the single issue identified, the provision of supplemental instruction pursuant to Education Code section 37252.2, is outside the jurisdiction of OAH. District's motion to dismiss is deemed moot, because Student's complaint is found to be insufficiently pled herein, and Student shall be granted leave to amend the complaint. The District may present a new motion to dismiss Student's complaint upon the filing of an amended complaint, as necessary.

[3] 20 U.S.C. § 1415(b) & (c).

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 (FAPE) 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.[4] 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.[5]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[6] The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.[7] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[8]

## DISCUSSION

Student's complaint raises one issue regarding the District's refusal to provide Student with "supplemental instruction" under Education Code section 37252.5. As a resolution, Student requests that the District describe available areas of supplemental instruction and discuss appropriate instruction with the parents.

Student's complaint fails to identify any issue regarding the proposed initiation or change concerning the identification, evaluation, or educational placement of the Student, or the provision of a FAPE. The complaint makes no allegation that the District has denied

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[4] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

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

[6] Sen. Rep. No. 108-185, *supra*, at p. 34.

[7] *Alexandra R. v. Brookline School Dist*. (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

[8] Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Student a FAPE, and fails to provide any information or facts showing when or how such a denial of FAPE might have occurred. Student does not identify and describe what type of instruction Student requires that the District has failed to offer or provide, and why any particular instruction or service is necessary for Student to access his educational program.

Student does not set forth how the District's alleged failure to provide "supplemental instruction" involves a violation of the IDEA. Student's complaint is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem. Student's complaint is insufficient in that it does not identify the basis of Student's eligibility for special education, which individualized education program (IEP) is at issue, how the District has failed to provide a FAPE, and what it is that Student requires for a FAPE and why. For the above reasons, Student's complaint is inadequate to put the District on notice as to the basis of Student's claims and to permit the District to respond to the complaint and participate in a resolution session and mediation.

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).) Student's complaint does not contain clear proposed resolutions as to what Student requests if OAH determines that the District denied him a FAPE. Student's complaint does not contain a well-defined proposed resolution, and therefore does not meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Accordingly, Student's complaint is insufficiently pled.

**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 [9] Parent is encouraged to contact OAH for assistance if he intends to amend his due process hearing request.**

ORDER

1. Student's complaint is insufficiently pled under title 20 United States Code section 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).[10]

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9 Ed. Code, § 56505.

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

3. The amended complaint shall comply with the requirements of title 20 United States Code 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.

6. The District's motion to dismiss is denied as moot.

Dated: December 13, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings