

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NATOMAS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011061055

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 23, 2011 Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming Natomas Unified School District (District). On July 7, 2011, District filed a Notice of Insufficiency (NOI) as to Student's complaint. On July 13, 2011, Student filed an opposition to the NOI. On July 14, 2011, District filed a reply to the opposition. The Office of Administrative Hearings (OAH) denied in part and granted in part the NOI on July 19, 2011, which held Student's Issues 1, 2, and 3 sufficient and Issue 4 insufficient, and gave Student 14 days to file an amended complaint.

On August 2, 2011, Student filed an amended complaint. On August 17, 2011, the District filed an NOI as to the amended complaint.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).

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's motion to dismiss Issue 4 for being outside the scope of OAH's jurisdiction will be ruled on in a separate order.

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 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 amended complaint contains four issues for hearing and Issues 1, 2 and 3 are legally sufficient pursuant to the July 19, 2011 Order. Student amended Issue 4 in response to the Order, which alleges that the District violated Parents’ procedural rights by limiting their ability to communicate with Student’s teacher, service providers, and District staff, failing to respond to parental requests for information, unilaterally inserting parental information in Student’s individualized education program (IEP), and not considering information presented by Parents at IEP team meetings. Student alleges sufficient facts that the District purportedly violated Parents’ procedural rights by limiting their ability to

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).

participate in Student's educational decision-making process. Therefore, Issue 4 contains sufficient factual allegations as to Student's contentions.

Student's proposed resolutions requests compensatory education and the type requested and that inaccurate information be removed from Student's records. 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).) The proposed resolutions stated in Student's complaint are well-defined, and therefore meet the statutorily required standard of stating a resolution to the extent known and available at the time.

Accordingly, the complaint is sufficiently pled to put the District on notice as to the basis of Student's claims and proposed resolutions to permit the District to respond to the complaint and participate in a resolution session and mediation.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: August 18, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings