

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. 2011061055

ORDER DENYING MOTION TO  
DISMISS AND DETERMINATION OF  
PARTIAL SUFFICIENCY OF DUE  
PROCESS COMPLAINT

On June 23, 2011 Parent on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Natomas Unified School District (District).

On July 7, 2011, District filed a [Notice of Insufficiency] (NOI)/ Motion to Dismiss as to Student's complaint.

On July 13, 2011, Student filed an opposition to the NOI/Motion to Dismiss.

On July 14, 2011, District filed a reply to the opposition.

*Motion to Dismiss*

Student's complaint asserts four issues for determination. Those issues are:

- (1) Was District's assessment of Student was appropriate?
- (2) Did District inappropriately deny Student an independent educational assessment (IEE) at public expense?
- (3) Did District deny Student a FAPE by failing to provide the speech and language services contained in the last agreed upon IEP?
- (4) Did District violate federal and state law by attempting to curtail parents' ability to monitor the implementation of Student's IEP by among other things taking legal action against Student's parents?

District contends that OAH should dismiss issues 1, 2 and 3 on the grounds that the issues allege facts and claims that are beyond the two year statute of limitations. District also contends that OAH should dismiss issue number 4 of the complaint on the grounds that it

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<sup>1</sup> 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).

seeks a determination of issues outside of the jurisdiction of OAH. Specifically, District asserts that the allegations contained in issue number 4 of the complaint pertain to District's legal action against Student's parent which District asserts are not within OAH's jurisdiction and may also involve discrimination claims not within OAH's jurisdiction. Student contends that her claims are not barred and that she exhausted other administrative remedies before filing her complaint. Student also contends that issue 4 presents a claim arising from District's interference with Parents rights to participate in Student's education.

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure.

Issues 1, 2, and 3 allege that District's assessment was inappropriate, that an IEE should have been provided and that Student's speech and language services were not provided. The allegations cover a three year span and may or may not allege facts outside of the statute of limitations. In this instance, the determination of when the statute of limitations expired and whether or not an exception to the statute of limitations is applicable cannot be readily determined from the face of the complaint. Additionally, a factual determination must be made as to whether or not Student's claims fall within an exception to the two year statute of limitations for due process complaints. A factual determination cannot be made by way of a motion to dismiss. As set forth above, special education law does not provide for a summary judgment procedure. Accordingly, the request for dismissal of issues 1, 2 and 3 must be denied. Finally, Issue 4 does not specifically state a claim for disability discrimination or civil rights violations. Accordingly, Student's complaint is not subject to dismissal at this time.

*NOI*

District contends that the allegations in issues 3 and 4 of the complaint fail to state sufficient facts and details to put the District on notice of the issues forming the basis of the complaint and to prepare for and/or participate in mediation and a resolution session. Student contends that the issues are sufficiently pled.

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> 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 (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.<sup>3</sup> 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.<sup>4</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> 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.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>7</sup>

As set forth above, Student’s complaint alleges four claims. Some of the claims are sufficient and some are insufficient. The issues are discussed below.

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<sup>2</sup> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *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.].

<sup>7</sup> 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 has provided sufficient detail and facts with respect to issues 1, 2 and 3 to put District on notice as to the basis of Student's claims. Student has met the minimum threshold of providing 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, facts relating to the problem, and a proposed resolution of the problems as to issues 1, 2, and 3. With respect to issue 3, Student has sufficiently stated a claim that District failed to provide the speech and language services set forth in Student's last agreed upon IEP and therefore denied him a FAPE.

With respect to issue 4, Student has not pled sufficient facts to provide District with the required notice and has not provided sufficient detail to make the nexus between the allegations and a deprivation of a free appropriate public education to state a claim. Student's complaint refers to a legal action by District and to District preventing Student's parents from monitoring implementation of Student's IEP. Student must plead facts that demonstrate District's interference with or inhibition of her parents rights to participate in the IEP process and the monitoring of implementation of the IEP, and how those facts give rise to a denial of FAPE. According, Student's issue 4 is not sufficient.

#### ORDER

1. The motion to dismiss is denied.
2. Issues 1, 2 and 3 of Student's complaint are sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii). Issue 4 is not sufficient.
3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(I)(II).
4. 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.
5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1, 2, and 3 of Student's complaint.

Dated: July 19, 2011

/s/

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GLYNDA B. GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings