BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MORAGA ELEMENTARY SCHOOL DISTRICT, ORINDA UNION SCHOOL DISTRICT AND CONTRA COSTA SPECIAL EDUCATION LOCAL PLANNING AREA.	OAH Case No. 2016030883 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AS TO MORAGA AND ORINDA

On March 14, 2016, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Moraga Elementary School District, Orinda Union School District and Contra Costa Special Education Local Planning Area.

On March 22, 2016, Orinda filed with OAH a Notice of Insufficiency of Due Process Complaint.

On March 28, 2016, Moraga filed with OAH a Notice of Insufficiency of Due Process 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).

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

[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).

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 contains six issues supported by four exhibits. Student's issues are as follows:

(1) School-based speech and language therapy has been "inefficient and insufficient" as "Student is ten years old and "does not speak despite being capable of doing so."

(2) "During the last few years," Student has demonstrated inappropriate academic performance by only meeting 30 percent of his goals.

(3) Student has demonstrated significant deficiencies in occupational therapy in the areas of self-stimulation, absence of handwriting, basic living skills such as tying shoe laces, and keyboard typing.

(4) Student requires augmentation and alternative communication device per assessment.[2] Student also alleges that "the school" does not have any staff trained or qualified in Augmentative and Alternative Communication.

[2] Exhibit one contains an assessment by Jennifer McDonald-Peltier of the Center for Accessible Technology. This assessment was obtained by Student.

(5) Student needs individual behavior support. Student also contends that the subject was brought up "many times at IEP meetings."

(6) Student needs adaptive physical education as mentioned in the May 2015 Individualized Education Program meeting.

The exhibits attached to the complaint are an assessment report by Ms. McDonald-Peltier regarding AAC, invoice from LindaMood-Bell, a report and invoice from Gail Horton, an occupational therapist, and a report from a speech language therapist from Therapy at Play. All the exhibits relate to Student's proposed remedies.

Student's complaint alleges six claims in the complaint, which are all insufficiently pled. Student's complaint fails to provide both Orinda and Moraga with the required notice of a description of the problem and the facts relating to the problem. In the complaint, Student alleges that he is a resident of Orinda. Moraga, in its NOI, states that Orinda is Student's district of residence, which enrolled Student in a Moraga program for the 2015-2016 school year. For each issue, Student has failed to allege how each of the two districts are responsible for providing a free appropriate public education for Student and in what manner each failed to do so.

More particularity as to each issue, Student fails to allege details which would put each district on notice what is being alleged as follows.

Issue One--Student fails to demonstrate in what manner the speech and language services were not appropriate, what speech and language services would have been appropriate, and the time period involved.

Issue Two—Student refers to the time period as "the last few years." Student needs to allege the specific time period at issue, in what manner Student's academic performance was not satisfactory, and which specific goals did he fail to meet.

Issue Three—Student needs to allege the specific time period at issue, what manner did Student demonstrate significant deficiencies in self-stimulation, handwriting, basic living skills, and keyboard typing, and how the occupational therapy services provided were not appropriate.

Issue Four—Student fails to allege the time period of the IEP's at issue, what AAC should have been provided. Student fails to allege whether the parentally obtained assessment had been reviewed by Moraga and/or Orinda.

Issue Five—Student fails to allege any facts as to why he needs individual behavior services. Additionally, Student fails to allege what specific behavior services should have been provided, and the time period and/or IEP's at issue.at issue.

Issue Six—Student does refer to the May 2015 IEP, but he fails to demonstrate why Student requires adaptive physical education services.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: 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. Student's complaint is insufficiently pled under section title 20 United States Code 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).[3]

3. 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.

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.

DATE: March 29, 2016

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

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