BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2014090329
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
MILPITAS UNIFIED SCHOOL DISTRICT.	

On September 5, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request[1] (complaint) naming the Milpitas Unified School District as respondent.

On September 18, 2014, Milpitas filed with OAH 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.[2] 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 of the problem to the extent known and available to the party at the time.[3] These requirements prevent vague and confusing complaints, and promote fairness by providing the

[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] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] 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.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION

Student's complaint fails to clearly specify what actual claims she is making. The complaint fails to list each claim being made and the facts to support each claim. The complaint contains a narrative which lacks specific details to permit the reader to know what claims Student is pleading. The complaint appears to be making two allegations. The first is that Student's Individualized Education Program for 2014-2015 and 2014 extended school year has been delayed. The second is that Student was entitled to "compensatory services" for Milpitas' failure to place Student when she was three years old to six years old in a placement which would meet the requirements of the Deaf Children's Bill of Rights.

As to the first issue, Student alleges that her IEP is past due; but then she alleges that Milpitas held IEP team meetings in May and June 2014. Student states that her parent refused to consent to any IEP because it did not contain "compensatory services" for Milpitas' failure to place Student for her first three and a half years in the District pursuant to the Deaf Children's Bill of Rights. There is no mention whether Milpitas and Student had entered into an agreement for compensatory services or whether the IEP proposed at the May

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

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

[6] *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.].

[7] 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).

and June 2014 meetings was not appropriate to provide her with a free appropriate public education.

As to the second issue, Student appears to contend that her placements during her first three and half years at Milpitas led to her skills regressing to the extent that she had to be retained an unspecified grade. Since Student contends that she began attending school in Milpitas when she was almost four years, it is unclear whether her claim may be barred by the applicable two year statute of limitations.

Student's complaint is insufficiently pled in that it fails to provide Milpitas with the required notice of a description of the problem and the facts relating to the problem.

Student should clearly individually state each issue and the facts supporting her claims. As to the May-June IEP, Student must specifically state why this IEP is not appropriate to provide her a FAPE, including the reasons for it not being appropriate.

As a proposed resolution, Student requests OAH to order "compensatory services" to remedy Student being retained one grade and not being on a high school diploma track.

Student's proposed resolution request is also not sufficient. 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 resolution stated in Student's complaint is not well-defined. Student should allege what services she is seeking (i.e., additional communication services).

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. [8] 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).[9]

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8 Ed. Code, § 56505.

9 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.

DATE: September 19, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings