BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2014110457
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
CLOVIS UNIFIED SCHOOL DISTRICT.	

On November 6, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request[1] (complaint) naming Clovis Unified School District as respondent.

On November 14, 2014, Clovis filed with OAH a Notice of Insufficiency as to Student's complaint.

OAH did not receive a response from Student.

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 (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed

[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).

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 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

In the complaint, Student alleges a single issue: Whether Clovis denied Student a free appropriate public education by failing to actively seek and serve Student from October 2012 through present and find Student eligible for special education under the category of Other Health Impaired. In support of the issue, Student alleges that he has a severe allergy to peanuts and resulting asthma which could be life threatening. Since kindergarten, Clovis has provided Student with a Section 504 Plan to address his medical issues which included CPR trained teachers, and the presence at all times of an Epi-Pen. Since September 2014, Student's Section 504 Plan permits Student to carry an Auvi-Q pen in case of emergency. Student contends that Clovis should have found him eligible for special education and subsequently provided him with an appropriate placement in a peanut free environment, or banned peanuts from the school. He alleges as proposed resolutions that Clovis provide

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

[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).

Student placement at a non-public school or in an appropriate peanut product free placement and for reimbursement to Student's parent for all educationally related expenses incurred.

Student's complaint is sufficiently pled to put District on notice of the single claim alleged in the complaint, specifically whether District met its Child Find obligations under the IDEA. It can be inferred from the facts alleged in the complaint that Student contends that District should have assessed him for eligibility for special education under the eligibility category of Other Health Impaired due to his peanut allergy, and whether Student is eligible for special education services. The claim is sufficiently pled to put District on notice of the issue to prepare for a resolution session, mediation and due process hearing. The merits of the case are to be decided at hearing, not in an NOI. Student's proposed resolution is sufficiently pled.[8]

ORDER

1. Student's complaint is sufficiently pled under section title 20 United States Code 1415(c)(2)(D).

2. All dates previously set in this matter are confirmed.

DATE: November 19, 2014

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

[8] Clovis also filed a motion to dismiss in the alternative to the NOI. The motion will be addressed in a separate order. In the future, Clovis should file separately NOI's and Motions to Dismiss.