BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017080894
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
SAN MARCOS UNIFIED SCHOOL DISTRICT.	

On August 21, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming San Marcos Unified School District. On September 5, 2017, District filed a Notice of Insufficiency as to Student's complaint. On September 6, 2017, Student filed an opposition.

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 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,

[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).

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 alleges three claims, two of which are sufficient and one of which is insufficient. The issues are discussed below.

Issues One and Two are sufficiently pled to put District on notice as to the basis of Student's claims. Student claims District denied her a free appropriate public education by failing to provide an appropriate individualized education program and failing to assess in all areas of suspected disability. Student provides a description of the problem; she alleges that she did not receive any services during the 2016/2017 school year, and for the 2015/2016 school year she only received services if she attended school. Student further alleges she did not meet any of her goals. Regarding the assessments, Student alleges she required assistive technology services yet District did not provide an assistive technology assessment, and that she required an occupational therapy assessment to determine her current level of functioning and areas of need. Although Student does not specify the exact dates of the alleged violations in Issues One and Two, her factual background prior to August 21, 2015, does not render the complaint insufficient as presumed that Student is only alleging violations that occurred within the two years statute of limitations.[2]

With regard to Issue Three, Student alleges that assessments conducted in February of 2015, more than two years ago, are inappropriate. California Education Code Section 56505(l) requires a party to request a due process hearing within two years from the date they knew or had reason to know of the facts underlying the basis for the request. (*M.M. & E.M. v. Lafayette School District* (N.D.Cal. February 7, 2012, Nos. CV 09–4624, 10–04223 SI) 2012 WL 398773, **17 – 19, affd. in part & revd. in part (9th Cir. 2014) 767 F.3d 842, 859; A parent cannot invoke an exception to the two-year statute of limitations simply by demonstrating specific misrepresentations or withholding of information; the parent must additionally show that the misrepresentations or withholding caused parent's failure to request a hearing or file a complaint on time.) However, Student fails to allege any facts

[2] If Student wishes to allege violations beyond the two year statute of limitations, Student will need to file an amended complaint with the clarifying information.

regarding when she knew or should have known that the February 2015 assessments were inappropriate. Therefore, Student has failed to state sufficient facts supporting this claim, and the claim is insufficient.

Student's proposed resolutions request specific prospective services, compensatory services, and assessments. 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. Student has met the statutorily required standard of stating a resolution to the extent known and available to her at the time.

ORDER

1. Issues One and Two of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issue Three of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues One and Two in Student's complaint.

DATE: September 14, 2017

DocuSigned by:
Linda Johnson
LINDA JOHNSON
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Administrative Law Judge
Office of Administrative Hearings

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