

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MILPITAS UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011040047

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On March 31, 2011, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Milpitas Unified School District (District). On April 14, 2011, the District filed a Notice of Insufficiency (NOI) 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.<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>

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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).

<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.

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 Individuals with Disabilities Education Act 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 (ALJ).<sup>7</sup>

## DISCUSSION

Student’s complaint raises one issue, with four sub-issues, for determination, and the facts alleged in the complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Issue 1a alleges that the District failed to implement Student’s interim individualized educational program (IEP) after he transferred into the District. Student’s complaint asserts sufficient facts regarding the interim IEP and the District’s failure to properly implement this IEP. Therefore, this issue is sufficient.

Regarding Issue 1b, Student alleges that the District failed to accurately identify Student’s unique needs and therefore could not properly develop an educational program that addressed his unique needs. The complaint contains adequate allegations regarding the District’s failure to timely assess Student after Parents’ request and the areas in which the District failed to assess Student when it finally assessed him. Accordingly, this issue is sufficiently pled.

As to Issue 1c, Student contends that the District failed to develop adequate goals that addressed his unique needs and did not consider information presented by Parents regarding Student’s areas of need. The complaint contains sufficient contentions as to the IEPs at issue, Student’s unique needs, information presented by Parents, and how the proposed goals purportedly did not address Student’s unique needs. Therefore, Student alleged sufficient facts in this issue.

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<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).

Finally as to Issue 1d, Student asserts that the IEPs developed by the District were not reasonably calculated to permit Student to make meaningful educational progress because the IEPs did not adequately address Student's unique needs. The complaint contains adequate allegations as to the District's offers, Student's unique needs and how the IEPs failed to meet his unique needs. According, this issue is sufficiently pled.

Student's complaint identifies the issues and contains adequate related facts about the problem and adequate proposed resolutions to permit the District to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's complaint is sufficient.

### ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: April 15, 2011

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings