

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

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	:	
Plaintiffs,	:	Docket No.:
	:	OSAH-DOE-SE- Miller
v.	:	
	:	
BALDWIN COUNTY SCHOOL DISTRICT,	:	
	:	
Defendant.	:	

ORDER ON NOTICE OF INSUFFICIENCY

Following the filing of the Plaintiffs' Due Process Complaint, the Defendant filed a timely challenge to its sufficiency,¹ in accordance with 20 U.S.C. §§ 1415(c)(2)(A), (C) and 34 C.F.R. § 300.508(d). As set forth below, the Plaintiffs' Complaint is insufficient to meet the requirements of the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") and is subject to dismissal unless properly amended.

IDEA authorizes a parent to file a due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(6)(A). The complaint must allege a violation that occurred within a two-year statute of limitations, subject to certain exceptions. 20 U.S.C. § 1415(b)(6)(B). IDEA further requires that the complaint contain the following:

- (I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

¹ The Notice of Insufficiency was filed on April 1, 2014, and received by the undersigned on April 2, 2014. The Plaintiffs filed a response on April 2, 2014. Although the Plaintiffs' Complaint was filed nearly five months earlier, on November 5, 2013, the Notice of Insufficiency was nonetheless timely, given that the proceedings were stayed by agreement of the parties until March 17, 2014. See 34 C.F.R. § 508(d)(1).

- (II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;
- (III) a description of the nature of the problem of the child relating to such proposed initiation or change,² including facts relating to such problem; and
- (IV) 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). These pleading requirements help achieve fairness in the hearing process by ensuring that the Defendant has received adequate notice of the factual allegations and been afforded an opportunity to resolve the identified problems.

In this case, the Plaintiffs have filed a 31-page Complaint containing a series of poorly organized, imprecise, and repetitive allegations. At “Part 1” of their Complaint, the Plaintiffs have utilized the Due Process Hearing Request form provided by the Georgia Department of Education. To this form document, they have added “Part 2,” which consists of 69 individually-enumerated factual allegations, under sections entitled “Further Statement of Facts – Preliminary Statement,” “Preliminary Allegations and Rights,” “Further Statement of Facts,” and “Denials of FAPE and Violations of IDEA.” In the next section, “Some Rights Concerning the Facts – Statutory Framework,” the Plaintiffs cite numerous provisions of IDEA and its governing regulations, which they contend the Defendants have violated. Later, beginning on page 22 of their Complaint, they have provided a “Statement of the Problems” wherein they “reaver the facts and denials of FAPE and IDEA” and identify seven problems that are not clearly linked to any of the alleged facts or law recited in the previous 21 pages. Finally, the “Statement of the

² The “proposed initiation or change,” or refusal to initiate or change, must relate to the identification, evaluation, educational placement, or provision of a free appropriate public education to the child. 20 U.S.C. §§ 1415(b)(3), (b)(6)(A), (b)(7)(A); 34 C.F.R. §§ 300.503(a), 300.507(a), 300.508(b).

Current Resolution,” although twelve paragraphs in length, is similarly lacking in detail and disconnected from the remainder of the Complaint.

The Defendant contends that the Complaint is insufficient as to both the description of educational problems and the proposed resolution of the problems. The Court finds, after considering the parties’ arguments and undertaking a rather laborious review of the Complaint, that the Complaint is generally sufficient with respect to the description of problems. However, the Complaint is insufficient as to: (1) the allegation that the Defendant withheld educational records or other information; and (2) the proposed resolution of the identified problems.

First, the Court finds that the Defendant has received minimally adequate notice of educational problems. Despite the confusing and repetitive nature of the Complaint, the Plaintiffs have provided a description of the nature of problems that is sufficient to comply with the bare minimum requirements of IDEA. 20 U.S.C. § 1415(b)(7)(A)(ii)(III); see United States v. Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir. 2003) (“Some complaints are windy but understandable. Surplusage can and should be ignored. Instead of insisting that the parties perfect their pleadings, a judge should bypass the dross and get on with the case.”). However, this finding of sufficiency is premised on the Court’s interpretation that the “Statement of the Problems” section of the Complaint encompasses the entire universe of problems for which the Plaintiffs seek relief under IDEA. To the extent the Plaintiffs may intend to seek relief under IDEA for alleged problems recited in another section, their Complaint is insufficient. See Lockheed-Martin, 328 F.3d at 378 (“Length may make a complaint unintelligible, by scattering and concealing in a morass of irrelevancies the few allegations that matter.”). Further, the Complaint is insufficient to the extent the Plaintiffs have alleged that the Defendant improperly withheld educational records or other information, as it contains no specific facts (such as dates, persons involved, or records sought) to support such allegations.

Second, the Court finds that Complaint is insufficient as to the proposed resolution that the Plaintiffs seek. The Plaintiffs' proposals are vague and unconnected to the alleged problems, thereby requiring the Defendant to hypothesize as to the appropriateness and feasibility of the proposals. For example, the Plaintiffs have requested, *inter alia*, "an appropriate private school instructional program dedicated to [], specific needs and learning disability, as has been sought in a Lindamood Bell program," without providing any further information regarding the specific Lindamood-Bell program proposed or its cost, location, or duration. They have also requested "[r]eimbursement for private assessments," but have not identified the type of assessments, their cost, or even whether or not such assessments have already been performed. Similarly, they have provided no details regarding their requests for "500 hours of compensatory instruction at the Defendant's cost but at the Plaintiffs['] election and selection" and "repayment for the provision of remedial and private therapy and instruction, plus transportation costs." IDEA requires the Plaintiffs to offer a proposed resolution "to the extent known and available to the party at the time." 20 U.S.C. § 1415(b)(7)(A)(ii)(IV). While the Court recognizes that the Plaintiffs may not be able to provide full details of each aspect of the proposed remedy at this time, they must disclose the information that is in their possession or otherwise available to them.

Accordingly, on or before **April 21, 2014**, the Plaintiffs are hereby **ORDERED** to amend their Complaint in accordance with this Order. **Should the Plaintiffs fail to file a timely amendment, the Complaint may be dismissed.**

SO ORDERED, this ____ day of April, 2014.

KRISTIN L. MILLER
Administrative Law Judge