BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017110316
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
KERN COUNTY SUPERINTENDENT OF SCHOOLS.	

On November 7, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Kern County Superintendent of Schools. On November 17, 2017, Kern County filed a notice of insufficiency as to the first issue in Student's complaint.

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 is eligible for special education under the category of emotional disturbance. In 2016, Student filed a complaint with OAH alleging that Kern County had denied her a FAPE for the two year period prior to the filing of the complaint. The matter went to hearing and an OAH ALJ issued a Decision in August 2016, finding in favor of Student. The ALJ ordered Kern County to fund at least six months of placement of Student in a residential treatment facility. There appears to be no dispute between the parties that Student was then placed at San Diego Children's Center, a residential treatment center that also operates a nonpublic school. However, when Student reached the age of 18 she could no longer reside at the facility, although she was still able to attend the nonpublic school. Therefore, Kern County agreed to provide a stipend to Parents so Student could reside with one or both in San Diego, and continue to attend the nonpublic school. In 2017 an IEP was developed that called for Kern County to provide a stipend in the amount of $5,000, for this purpose.

Student's complaint contains two issues. The first issue claims that Kern County failed to provide Student with a FAPE for the 2017-2018 school year because it "Fail[ed] to properly fund Student's family in providing the residential component of its offer of FAPE." The second issue (which Kern County agreed is sufficiently pled) claims that Kern County failed to provide Student with a FAPE because it "Fail[ed] to implement the terms of its 2017 IEP which provided such funding, in the amount of $5000.00 to properly fund Student's family in providing the residential component of its offer." There is no dispute between the parties that the second issue is sufficiently pled.

Student's first issue is insufficiently pled. Based on the wording of the first issue, it can be interpreted two ways. The first interpretation is that Student is claiming that Kern County is insufficiently funding the residential component of the placement of Student in Center's nonpublic school in terms of the amount of the stipend being paid to Parents. The second and equally valid interpretation is that Kern County is not paying Parents the stipend it has agreed to in the most current IEP. The second interpretation is simply another way of restating the second issue in the complaint. Accordingly, Student's first issue is found to be insufficiently pled.

ORDER

1. The second issue in Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. The first issue in 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).[2]

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 the second issue in her complaint.

DATE: November 21, 2017

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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