BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

KERN COUNTY SUPERINTENDENT OF SCHOOLS, ROSEDALE UNION ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2019100374

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On October 9, 2019, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Kern County Superintendent of Schools and Rosedale Union Elementary School District. On October 18, 2019, Kern County timely filed a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (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: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution 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, *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.)

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).)

DISCUSSION

Student's complaint identifies three problems or complaints, referred to as Issues.

Issue one contends that both respondents have not assessed Student in all areas of suspected disabilities since 2014. Student alleges that Kern County and Rosedale Union assessed him in some areas since 2014, and those assessments were incomplete. Student requests independent educational examinations in speech and language and other areas outlined in attachment one to the complaint, along with compensatory education and reimbursement. Although Issue one does not set out the exact assessments complained of, the information necessary to respond to Student's Issue one can be gleaned directly from the entire complaint and attachments. Issue one and the requested resolution are sufficient.

Issue two alleges that Student has been "bounced" from school to school and that Kern County and Rosedale Union have ignored private assessments obtained by Parent. Student also alleges that neither Kern County nor Rosedale Union has assessed Student in behavior, fine motor skills, gross motor skills, audiology, LindaMood Bell or cap-dots, or severe speech and language. Student seeks independent educational examinations for fine motor and gross motor skills, and occupational therapy, dyslexia, and audiology, along with compensatory education and reimbursement. Issue two and the corresponding resolution are sufficient.

Issue three claims that neither Kern County nor Rosedale assessed Student in all areas outlined by the Kern Regional Center in 2013, and ignored private assessments and other services obtained by mother. Student asserts that respondents ignored recommendations by a physician at Cedars Sinai and advised mother that speech services were limited, and transportation services were unavailable. Student's proposed

resolution is independent educational examinations as outlined above, and compensatory education and reimbursement. Issue three and the requested resolution are sufficient.

The complaint and attachments, in their entirety, set forth adequate facts and dates about the three Issues and corresponding resolutions to permit Kern County to respond and participate in a resolution session and mediation. Student has also met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

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.

IT IS SO ORDERED.

DATED: October 21, 2019

DocuSigned by:

Brian H. Krikorian
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Administrative Law Judge
Office of Administrative Hearings