BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2016040211
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
KERN COUNTY SUPERINTENDENT OF SCHOOLS.	

On April 12, 2016, Parents on behalf of Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Kern County Superintendent of Schools. On April 15, 2016, Kern filed a Notice of Insufficiency 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. (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 is eight pages and contains two issues. The complaint contains two issues that Kern has denied Student a free appropriate public education in the 2014-2015 and 2015-2016 school years by (a) failing to consider whether Student was disabled and needed special education services, and (b) failing to offer Student an Individualized Education Program reasonably designed to provide her educational benefit.

The complaint contains about six pages of detailed facts to support the two issues. The complaint states that Student enrolled in the 11th grade at Valley Oaks Charter School, a homeschool based program. Student had been diagnosed with depression, irritable bowel syndrome, and pyloric stenosis.[2] Student had failed six classes during the tenth grade at her home school, Tehachapi High School. In her first semester at Valley Oaks, Student failed four classes. On December 13, 2013, Student's father reported to the Valley Oaks principal that Student was experiencing emotional difficulties. On March 24, 2013, Father emailed Student's teachers that she was out of school due to medical problems and requested an extension to complete her work. On April 24, 2014, Parents requested in writing that Student be assessed for eligibility for special education. Student was found eligible for special education on September 18, 2014. In the second semester, Student began to experience academic difficulties resulting in her failing three of six courses. The IEP team informed Parents that Student would receive a Behavior Support Plan, which never was adopted. On November 21, 2014, the IEP added additional social-emotional supports for Student following an additional mental health assessment. Student once again had academic problems, but Kern failed to conduct further evaluations although Kern was aware of Student's medical condition which was apparently impacting her academically and behaviorally.

[2] Pyloric stenosis is a narrowing of the opening from the stomach to the small intestine.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit 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 deemed sufficient under title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: April 18, 2016

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Robert Helfand
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ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings