BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SOUTHERN KERN UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018030188 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 5, 2018, Parent on behalf of Student filed a request for a due process hearing[1] (complaint) with the Office of Administrative Hearings naming Southern Kern Unified School District. On March 6, 2018, District timely 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 contains four problems or issues. District contends that issues one, two, and three are insufficient as pled. District does not raise a challenge to Student's fourth issue, which states that because District has not adequately responded to Parent's requests for adequate services for Student, District must pay Student's legal expenses and attorney's fees. As discussed below, Student's issues one and two, and parts of issue three, are insufficient as presently stated.

In issue one Student contends that he is eligible for special education under the categories of emotional disturbance, specific learning disability, and as other health impaired. Student contends that District has failed to implement adequate goals, services, and supports to provide him with a free appropriate public education. Student fails to list any facts in support of this allegation. He fails to state which time frame is covered by the issue and which, if any, of his individualized education programs is inadequate. Student fails to state which of the goals in his IEPs are not adequate and why they are not. Student does not state which of the services or supports he received are inadequate and why they are inadequate. Student also fails to state what type of additional services or supports he requires that District failed to provide and why he needs them to receive a FAPE. For these reasons, Student's issue one is insufficient as presently pled.

In issue two, Student contends that in 2014, when he was in fourth grade, District improperly "stripped" him of special education eligibility, thereby ceasing all services, although Student's data showed he was eligible. Student fails to give any supporting facts concerning the circumstances of this issue. He fails to state whether District found him ineligible for special education at the time and therefore exited Student from special education, whether it was through an IEP team decision or was done unilaterally, and whether Parent agreed at the time to the decision. The lack of supporting facts and specificity about what happened in 2014 make this issue insufficient as pled. Additionally, Student's contentions in issue two are outside of the two-year statute of limitations. Student fails to state which, if any, exceptions to the statute of limitations apply to this issue, or why

there may be other reasons to toll the statute of limitations. This lack of support for tolling the statute of limitations also makes issue two insufficient as presently stated.

In issue three, Student states that his eligibility for special education was reinstated in 2015. Student fails to say when in 2015 that occurred, or any facts about how he was reinstated and whether it was through a District IEP process. Although Student states that no adequate goals or services were provided for his "2015 eligibility," Student fails to state which goals and services were inadequate and for what reasons, what other types of goals or services he required and why that was so, and if the allegations only apply to his 2015 IEP(s) or if the allegations apply to all IEPs between 2015 and the present. Further, to the extent that Student is alleging a denial of FAPE between sometime in 2015 and March 5, 2016, when the statute of limitations period begins, Student has failed to state any exceptions to the two-year statute of limitations or any other reasons why the statute of limitations should be tolled. For these reasons, the allegations relating to 2015, which are in the first part of issue three, are insufficient as pled.

In the second part of issue three, Student contends that his IEP does not contain adequate therapeutic goals and services to address his emotional and behavioral challenges. Student also contends that District has failed to develop an emergency support plan for him, has failed to administer a functional behavior assessment, and has failed to develop a behavior intervention plan for him. Student also contends that he is not receiving adequate support for his academic classes. Student contends these failures have resulted in a rapid decline in his school performance, and have caused a severe increase in his emotional and behavioral challenges. Student contends that these concerns cover the last three years.

This second portion of Student's issue three is partially insufficient. It is insufficient in that it fails to state what type of academic support Student required to receive a FAPE. It is also insufficient as to any time prior to March 5, 2016, as Student fails to allege an exception to the two-year statute of limitations or any other grounds for tolling the statute.

However, the second part of issue three is sufficient as to Student's contentions that for the two years prior to the filing of his complaint, District failed to provide therapeutic goals and services to address his emotional and behavioral needs, failed to provide him an emergency support plan, failed to assess his functional behavior, and failed to develop a behavior support plan for him.

For these reasons, Student's issues one, two, and part of issue three, fail to provide District with sufficient information to allow it to adequately defend against Student's complaint.[2] Those portions of Student's complaint are insufficient as pled.

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[2] In addition to the insufficiency of the issues as discussed herein, Student failed to provide Parent's street address or email address, instead providing his attorney's information on the form complaint where Parent's information should have been stated. If Student files an amended complaint, he should include Parent's information as well as that of his attorney.

ORDER

1. Issues one, two, and portions of issue three of Student's complaint are insufficiently pled under title 20 U.S.C. section 1415(c)(2)(D).

2. The portions of issue three alleging that during the two years prior to the filing of Student's complaint District failed to provide Student with adequate therapeutic goals and services, failed to provide him with an emergency support plan, failed to administer a functional behavior assessment, and failed to develop a behavioral intervention plan for him, are sufficiently pled under title 20 United States Code section 1415(b)(7)(A)(ii).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

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 those portions of issue three found sufficient in Student's complaint, as detailed in paragraph 2 above, and only as to the two years prior to the filing of Student's complaint.

DATE: March 8, 2018

DocuSigned by:
Darrell Lepkowsky
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

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