BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LAMONT SCHOOL DISTRICT AND KERN HIGH SCHOOL DISTRICT.	OAH Case No. 2015050842 ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT AS KERN HIGH SCHOOL DISTRICT

On May 12, 2015, Parent on behalf of Student filed a Due Process Hearing Request[1] (complaint) naming Lamont School District and Kern High School District.

On May 26, 2015, 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.[2] 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.[3] These requirements prevent vague and confusing complaints, and promote fairness by providing the

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[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

[2] 20 U.S.C. § 1415(b) & (c).

[3] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[4]

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[5] 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.[6] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[7]

DISCUSSION

In his complaint, Student alleges two issues.[8] Issue one is that Student was denied a free appropriate public education by Kern since August 22, 2011, because Kern (a) failed to offer him an Individualized Education Program reasonably calculated to render Student educational benefits; (b) withheld critical information from Student's parent which prevented her from meaningful participation in the IEP decision-making process; (c) failed to conduct continuous monitoring of Student's lack of progress and offering appropriate supports when he failed to progress; and (d) failed to provided appropriate services and interventions to address all of Student's needs. Issue two contends that Kern failed to provide Student an appropriate comprehensive assessment, Transition Program, and IEP.

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[4] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

[5] Sen. Rep. No. 108-185, *supra*, at p. 34.

[6] *Alexandra R. v. Brookline School Dist*. (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

[7] Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

[8] Each of the issues was also alleged as Lamont for its actions occurring between April 9, 2002 and August 22, 2011, when Student attended school there.

Student alleges that he enrolled at Kern in 2011 when entering the ninth grade when it was "clear and uncontroverted" that he was a child suspected of having a disability.[9] Further, Student fails to allege when Kern should have found him eligible for special education and related services before the 2014-2015 school year as Kern conducted an initial assessment when Student entered the 12th grade after Regional Center conducted an evaluation which found Student to be autistic. Student contends that Kern has failed to provide him with an appropriate assessment, Transition Plan, and IEP. While the complaint alleges that Student is unable to "navigate the world by himself" and fails to understand social norms, Student fails to state in what manner the assessment, Transition Plan or IEP are deficient.[10]

Student's complaint alleges two claims in the complaint, which are all insufficiently pled. Student has failed to state a clear factual background which indicates in what manner Kern's assessment, IEP, and Transition Plans are not appropriate. Student should indicate the reasons why the assessment was not appropriate, which portions of the IEP and Transition Plan are not appropriate and why, and in what manner Student has lost educational benefit. Additionally, Student contends that Student's parent has been denied the right to participate in the IEP decision-making process, but fails to describe in what "critical information" has been withheld and any facts to support the contention that Kern failed to conduct continuous monitoring of Student's lack of performance or what supports should have been offered.

Student's complaint is insufficiently pled in that it fails to provide Kern with the required notice of a description of the problem and the facts relating to the problem so that it may participate in Resolution or mediation.

ORDER

1. Student's complaint is insufficiently pled as to Kern High School District under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[11]

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[9] Student's factual rendition appears to allege that Kern failed in its child find duties; although this was not alleged directly as an issue.

[10] Kern's contentions about Student's failure to allege facts that would toll the applicable statute of limitations are not appropriate for an NOI, which just looks at whether a party as alleged sufficient facts. Kern's concern is appropriate for a motion to dismiss.

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

3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed as to Kern High School District, and proceed as to Lamont School District, only.

DATE: May 28, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings