BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. KERN COUNTY OFFICE OF EDUCATION.	OAH Case No. 2017050511 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On May 8, 2017, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Kern County Office of Education. On May 18, 2017, Kern County filed a notice of insufficiency as to Student's complaint.[2]

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.)

[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).

[2] On May 18, 2017, Kern County also filed a motion to dismiss Student's complaint which has been ruled upon separately.

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 Individuals with Disabilities Education Act 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 raises four "Claims" in her complaint, which will be referred to as issues. The first three issues cite violations The Americans with Disabilities Act (42 U.S.C. §§ 1201, et seq.), section 504 of the Rehabilitation Act of 1973, and the Unruh Civil Rights Act (Civ. Code, § 51). These issues are dismissed under separate order, as OAH does not have jurisdiction to decide them.

Student's complaint contains a statement of facts that contains paragraphs 1 through 5. Paragraphs 6 through 29 encompass the three issues that OAH is dismissing due to lack of jurisdiction.

Student's fourth issue, hereafter referred to as Issue 4, alleges violations of the IDEA (20 U.S.C. §§ 1400, et seq.) and OAH does have jurisdiction over this issue. The issue begins with paragraph 30 that states that the preceding 29 paragraphs are incorporated by reference, but paragraphs 6 through 29 are related to the first three claims which are being dismissed.

There are four parts to Student's Issue 4 which will be referred to as Subissues 4a, 4b, 4c, and 4d. Subissue 4a is pled in paragraph 31 of the complaint and alleges that Kern denied Student a free appropriate public education "by procedurally and substantively denying [Student]'s parents the full ability to participate in the IEP process from March 18, 2015, to the present." [3] It cannot be discerned by reading the complaint what the specific facts are that establish a denial of a FAPE to Student based on interference with Parental participation in the

[3]The statute of limitations for filing a due process complaint is generally two years. (Ed. Code, § 56505(l).) Student filed her complaint on May 8, 2017. No finding is made at this time as to whether the two year statute of limitations can be extended back to March 18, 2015.)

IEP process. Because there is no information that would allow Kern County to prepare for hearing, participate in a resolution session and in mediation, Subissue 4a is insufficiently pled.

Subissue 4b as stated in paragraph 32, is a claim that Student was denied a FAPE because she was not assessed in all areas of suspected disability from March 18, 2015, to the present. Those areas are described as autism, physical therapy, assistive technology, and augmentative and alternative communication. Accordingly, Subissue 4b is sufficiently pled since it appears that Kern County has sufficient information to prepare for hearing, and participate in a resolution session and mediation in regards to this subissue.

Subissue 4c is found in paragraph 33 of the complaint. Although somewhat inartfully stated, Student is seeking a finding that Kern County assessments in the areas of occupational therapy (dated October 29, 2015), speech and language (dated February 28, 2017), and psychological (dated February 16, 2017) were not legally compliant. Subissue 4c is sufficiently pled since it appears that Kern County has sufficient information to prepare for hearing, and participate in a resolution session and mediation in regards to this subissue.

Subissue 4d is found in paragraph 34. It states that "Kern [County] failed to provide a FAPE when it failed to provide [Student] with appropriate supports and services given her known disabilities." Paragraphs 1 through 5 in the Statement of Facts contain allegations of various acts and omissions by Kern County which purportedly denied Student a FAPE. However, there is no information as to what supports and services were not appropraite. Because there is no information that would allow Kern County to prepare for hearing, participate in a resolution session and in mediation concerning this allegation, Subissue 4a is insufficiently pled.

ORDER

1. Subissues 4b and 4c, found in paragraphs 32 and 33 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 4a and 4d, found in paragraphs 31 and 34 of Student's complaint are 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).[4]

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.

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 4b and 4c, paragraphs 32 and 33, in Student's complaint.

DATE: May 24, 2017

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings