BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017090262
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF THIRD AMENDED DUE PROCESS COMPLAINT
KERN HIGH SCHOOL DISTRICT.	

On September 1, 2017, Parent on behalf of Student filed a Due Process Hearing Request[1] with the Office of Administrative Hearings naming Kern High School District. On September 6, 2017, Student filed a first amended complaint. On September 27, 2017, Student filed a second amended complaint. District challenged the sufficiency of the second amended complaint and on September 28, 2017, OAH found the second amended complaint to be insufficiently pled. On October 8, 2017, Student filed a third amended complaint (complaint). On October 23, 2017, District timely filed a Notice of Insufficiency as to the third amended complaint. On October 25, 2017, Student filed a fourth amended 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

[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] The motion to amend as to the fourth amended complaint will be addressed in a separate order.

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.)

DISCUSSION

Student's complaint alleges 14 claims, some of which are sufficient and some which are insufficient. The issues are discussed below.

Issues Insufficiently Pled

Issue 1: Student complains that in August 2016, District placed Student inappropriately in classrooms for students with severe disabilities. However, the complaint fails to describe how and why those classes were inappropriate for Student. The complaint does not explain Student's abilities to function in a general education classroom or why less restrictive classes are more appropriate.

Issue 2: Student complains that on September 6, 2016, Parent was told Student's records were lost and how a comment in the progress report regarding Student's hygiene was inappropriate. The complaint discusses Parent's disagreement with Student's test results reflecting Student's academic grade level. The complaint further mentions a note about Student's anxiety level which was allegedly kept from Parent. However, the complaint fails to describe and provide sufficient facts as to how lost records, the hygiene comment, the disagreement in Student's academic level of performance, anxiety concern denied Parent an opportunity to meaningfully participate in Student's educational decision making process the or denied Student a free appropriate public education.

Issue 5: Student describes Parent's interaction with a District counselor involving an individualized education program signature and transportation. The complaint goes to claim an addendum of September 28, 2016 was illegal. The complaint fails to clarify whether the

addendum is related to an IEP and how it was illegal. Also, the complaint fails to provide facts showing how these assertions denied Parent an opportunity to meaningfully participate in Student's educational decision making process or denied Student a free appropriate public education.

Issue 6: The complaint describes another interaction between Parent and a counselor, a complaint filed by Parent with District's human resources, and Parent's request for an inter-district transfer. The complaint fails to provide facts showing how the interaction, the filed complaint, or request for transfer denied Parent an opportunity to meaningfully participate in Student's educational decision making process or denied Student a free appropriate public education.

Issue 8: The complaint discusses a meeting with a SELPA staff member and describes the records which Parent was provided were "garbage." Again, the complaint fails to provide facts showing how these assertions denied Parent an opportunity to meaningfully participate in Student's educational decision making process or denied Student a free appropriate public education.

Issue 9: The complaint discusses a filing by Parent with District regarding records and Parent's request to prevent an individual from further writing Student's IEP. The complaint goes on about how Parent feels mistreated by District and her frustration with working with District staff. The complaint does not contain sufficient facts describing how these assertions denied Parent an opportunity to meaningfully participate in Student's educational decision making process or denied Student a free appropriate public education.

Issue 10: The complaint discusses a complaint filed by Parent with District regarding the hygiene comment, no records, and an independent educational evaluation Parent requested but was denied. The complaint explains that a list of assessments was provided to Parent on March 27, 2017, but did not include a speech assessment. The complaint goes on to discuss the California Department of Education's investigation as to Parent's complaints and the amount of attorney's fees Parent has accrued. The complaint lacks clarity on this issue and fails to provide sufficient facts as to how these assertions denied Parent an opportunity to meaningfully participate in Student's educational decision making process or denied Student a free appropriate public education.

Issue 11: The complaint discusses a May 22, 2017 IEP team meeting, records and transcripts but fails to describe or provide facts as to how these alleged failures denied Parent an opportunity to meaningfully participate in Student's educational decision making process or denied Student a free appropriate public education.

Issue 12: The complaint discusses an IEP team meeting held on August 18, 2017, to discuss an assessment conducted by Dr. Ball. The complaint describes Parents refusal to attend any further IEP team meetings with District. Again, the complaint fails to explain and provide facts showing how these assertions denied Parent an opportunity to meaningfully

participate in Student's educational decision making process or denied Student a free appropriate public education.

Issue 13: The complaint discusses what allegedly occurred at a resolution session on September 15, 2017, describing the interaction between Parent and District. However, the complaint fails to explain and provide facts showing how this discussion denied Parent an opportunity to meaningfully participate in Student's educational decision making process or denied Student a free appropriate public education.

Issue 14: The complaint describes a "GAG" order and email communications between Parent and District. However, the complaint fails to explain and provide facts showing how these assertions denied Parent an opportunity to meaningfully participate in Student's educational decision making process or denied Student a free appropriate public education.

Student's complaint is insufficiently pled as to these issues, in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem. As a result, it does not provide District with sufficient information to adequately prepare for the hearing and how to participate in resolution sessions and mediation as to those claims. Therefore, Student's complaint is insufficiently pled as to these issues.

Issues Sufficiently Pled

Issues 3, 4, and 7 are sufficiently pled to put District on notice as to the basis of Student's claims. Read as a whole, the complaint sufficiently pleads District's alleged failures to provide Parent access to Student's records, to assess Student, and to notify Parent of, and involve Parent in an IEP team meeting in September 2016.

Issue 3 alleges that on or about September 16, 2016, District denied Parent access to Student's records. Read in conjunction with Issue 2, the complaint is sufficiently clear that Parent was seeking to review Student's records. The complaint asserts Parent made numerous requests to obtain Student's records.

Issue 4 alleges District failed to notify Parent of a September 27, 2016 IEP team meeting. The complaint alleges the meeting took place without Parent participation.

Issue 7 alleges District failed to assess Student on or about November 17, 2016. Issue 10 of the complaint discusses Parent's expectation for a speech assessment. The compliant argues that District did not assess Student despite Student having a speech and learning disability.

The complaint contains enough facts relating to the issues of alleged failures to provide Parent with Student's records, to assess Student, and permit Parent to participate in an IEP team meeting in September 2016, to provide District with an awareness and understanding of these alleged violations. In construing the pleading requirements liberally,

the complaint sufficiently identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and to prepare for and fully participate in mediation as to these issues.

Among Student's proposed resolutions is for placement of Student in mainstream classrooms, enrollment at the Catholic Preparatory Private School, and compensatory education. 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).) The proposed resolutions stated in Student's complaint are sufficiently defined requests and meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Issues 3, 4, and 7 of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 1, 2, 5, 6, 8, 9, 10, 11, 12, 13 and 14 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).[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.

[3] 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 3, 4 and 7 in Student's complaint.

DATE: October 27, 2017

DocuSigned by:
Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings