BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SOUTHERN KERN UNIFIED SCHOOL DISTRICT AND KERN COUNTY CONSORTIUM SELPA.	OAH Case No. 2018041327 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AS TO SOUTHERN KERN UNIFIED SCHOOL DISTRICT

On April 27, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Southern Kern Unified School District and the Kern County Consortium Special Education Local Plan Area. On May 2, 2018, Consortium filed a notice of insufficiency as to Student's complaint. On May 7, 2018, Southern Kern filed a notice of insufficiency and motion to dismiss 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.)

[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).

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

Southern Kern alleges that 13 out of Student's 18 issues, named c, d, e, f, g, h, j, k, m, n, p, q and r, are insufficiently plead and further requests that they be deemed waived. Southern Kern does not contest the sufficiency of issues a, b, i, l, and o. It is inappropriate to file joint motions. This order will only address those arguments Southern Kern raised as a basis for insufficiency. Southern Kern's motion to dismiss had been addressed in another order. Southern Kern is directed to file separate motions in the future.

Student's complaint alleges 18 issues numbered a through r, and 12 are insufficiently pled, specifically issues c, d, e, f, g, h, j, k, m, n, p and q as discussed below. In a separate order, OAH has determined that issue r is dismissed.[2]

Student's complaint is 56 pages with 40 pages dedicated to a descriptive educational history and statement of facts from kindergarten through the eleventh grade. The complaint also includes a five-page issue statement that alleges 18 issues against Southern Kern and Consortium.

In many instances, Student fails to connect the detailed history and fact statement to the issues. Because of this, issues c, d, e, f, g, h, j, k, m, n and p are insufficiently pled in that they fail to provide Southern Kern with sufficient detail to determine the time of claims and in some cases the substance of the claims being made. The lack of detail in the issue statement is compounded by the complaint that contains 12 years' worth of facts not specifically connected to the issues pled. The issues identified above fail to put Kern on notice to prepare for a resolution session, mediation and hearing.

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[2] To the extent that Southern Kern's motion sought an order dismissing issues c, d, e, f, g, h, j, k, m, n, p and q, those issues are moot based upon the OAH order finding them insufficiently pled.

With regard to issues c, d, e, f, g, h, j, k, m, n, p, and q, Student fails to specify any dates, timeframes or designate any IEPs to place Southern Kern on notice of what Student is alleging against it. Because Student discusses 12 years of educational history and facts in the complaint, it is impossible to determine when the violations occurred. Further, Student does not specify any allegations of fact as to what specific acts or failures to act are attributable to Southern Kern in issues f, g, j, m, n and p. Because of this, the complaint fails to state sufficient facts that give Southern Kern an awareness and understanding of the issues as they pertain to it such that can be used to prepare for a resolution session, mediation and hearing.

ORDER

1. Issues c, d, e, f, g, h, j, k, m, n, p, and q of Student's complaint are insufficiently pled under title 20 United States Code section 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).[3]

3. 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. If Student fails to file a timely amended complaint, the hearing shall proceed only on issues a, b, i, l and o in Student's complaint.

IT IS SO ORDERED.

DATE: May 10, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings

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