BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. KERNVILLE UNION SCHOOL DISTRICT.	OAH Case No. 2014090030 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On August 26, 2014 Parent on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request[1] (complaint) naming Kernville Union School District as respondent.

On September 11, 2014, Kernville filed with OAH a Notice of Insufficiency and Motion to Dismiss 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

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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).

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.[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

Student's complaint is 15 pages with ten separate sections. Student lists three issues in general terms under the fourth section entitled "Proposed Issues." These issues are: (1) Whether Kernville is responsible for offering and providing Student with a free appropriate public education; (2) Whether Kernville failed to offer Student an appropriate educational program and related; and services; and (3) Whether Student is entitled to relief. In the first section entitled "Introduction," Student specifically lists his issues in more detail. Student contends that he has been deprived of a FAPE by Kernville by Kernville's failure to conduct timely assessments, provide appropriate services, implement Student's Section 504 plan, provide Student with a behavior support plan, provide Student his special education records timely, conduct individualized education plan meetings, provide an assessment plan, and adhere to mandated timelines for conducting assessments and IEP team meetings.

Student then goes on to discuss each of these claims in the seventh section entitled "Education History and Legal Argument." In the tenth section, Student lists the findings that

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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).

he is requesting OAH to render in his proposed resolutions. These proposed findings mirror the issues listed in the introduction.

It is clear that Student is alleging that based on his educational performance and behavior problems encountered since first grade, Kernville was on notice that Student required to be assessed to see if he was eligible for special education and related services. Student contends that this became very obvious because of Student's lack of progress while on Section 504 plans.

The facts alleged in Student's complaint are sufficient to put Kernville on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit Kernville to respond to the complaint and participate in a resolution session and mediation.

Student's proposed resolutions request: (a) independent education evaluations in all areas including educationally related mental health, specific learning disabilities, and other health impaired, (b) a new IEP to provide Student with a FAPE (based on the IEE), and (c) compensatory educational services according to proof. 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 well-defined. Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

Therefore, Student's complaint is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: September 21, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings