BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SOUTHERN KERN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020040363

ORDER DETERMINING ISSUE 1 OF STUDENT'S DUE PROCESS COMPLAINT TO BE SUFFICIENT

APRIL 27, 2020

On April 10, 202, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Southern Kern Unified School District. On April 24, 2020, Southern Kern filed a notice of insufficiency as to Issue 1 of the complaint.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (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: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution 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.)

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 Fed. Regs. 46,540-46,541, 46,699.)

DISCUSSION

Student alleges that the April 12, 2018 and April 10, 2019 individualized education programs, or IEPs, offered by Southern Kern included inaccurate present levels of performance, lacked behavior intervention plans, and made unclear offers of placement, services and supports. The complaint states that Southern Kern relied on outdated information regarding Student's cognitive functioning, adaptive behavior, social/emotional/behavior functioning and academic levels, and failed to conduct adequate transition, vocational/prevocational, and community access assessments. Issue 1 alleges a failure to assess in all areas of suspected disability, and Southern Kern contends that it cannot determine from the complaint the areas in which Student contends it should have assessed.

Student's complaint identifies the issues and states adequate facts about the alleged failures to assess Student in multiple areas of need to permit Southern Kern to respond, and participate in a resolution session and mediation.

Therefore, Student's s statement of Issue 1 of the complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii). All mediation, prehearing conference, and hearing dates in this matter are confirmed.

IT IS SO ORDERED.

DocuSigned by:
Alexa Hohensee
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Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings