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 INSUFFICIENCY OF DUE PROCESS COMPLAINT
KERN HIGH SCHOOL DISTRICT.	

On September 1, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Kern High School District as respondent. Student filed an amended complaint on September 6, 2017. A second amended complaint was filed on September 15, 2017. OAH deemed the amended complaints motions to file an amended complaint. An order allowing the filing of the second amended complaint was issued on September 27, 2017 designating the second amended complaint filed as of September 27, 2017.

On September 22, 2017, Kern filed a Notice of Insufficiency as to Student's second amended complaint. That motion is deemed filed as of September 27, 2017, the day the second amended complaint was deemed filed, as a notice of insufficiency could not be filed prior to the complaint being filed.

On September 26, 2017, Student filed another Request for Mediation and Due Process Hearing but noted at the top that it was her response to the Notice of Insufficiency. Student's opposition is also deemed filed as of September 27, 2017. The document filed by Student was not accompanied by a proof of service demonstrating that it was sent to the attorneys for Kern and was, therefore, not considered. In the future, Student should make sure to serve a copy of all documents filed with OAH on Kern.

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

[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).

Code section 1415(b)(7)(A). The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) The notice of insufficiency filed by Kern was timely.

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.)

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

Even applying a liberal construction to the second amended complaint, it fails to meet the standards of the pleading requirements. It is unclear how many claims are being made in Student's September 15, 2017 complaint. The second amended complaint was sent to Office of Administrative Hearings with a fax cover sheet as well as two pages with "2nd Amendment September 15, 2017" written at the top. These were attached to Student's first amended complaint. The second amended complaint attachments appear incomplete as they begin with the heading "Proposed Resolution #1" instead of with Problem/Complaint #1. However, that is not the only insufficiency. None of the issues in the attachments or in the complaint to which they are attached are sufficiently pled.

Student's complaint is insufficiently pled in that it fails to provide District with the required notice of a description of the problem and the facts relating to the problem. Generally, Student is required to state a clear problem he is having and the school year or other time frame in which the problem occurred. Student is then required to propose how he would like the issue to be resolved. For instance, it appears that Student is claiming that he was not provided all records. Student would need to state that District failed to provide all records requested during a particular school year or other time frame; or that were requested in a letter or email dated on a particular date. As a proposed resolution, Student could ask that the District provide copies of all of Student's educational records for a particular time frame or from a particular school.

While the documents filed by Student mention many concerns, none of the problems stated are clear enough for District to be put on adequate notice of what problems the Student is asserting Kern needs to defend or during what time period the problems occurred. Student must state each problem on which a hearing is being requested, when it occurred and a proposed resolution for each problem.

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). Here, the complaint states, "only a trial or a hearing will do". This is not an adequate proposed resolution. Kern High School District has the right to notice of what Student is asking the Office of Administrative Hearings to order Kern to do.

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. Student's complaint is insufficiently pled under section title 20 United States Code 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).[2]

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 21 days from the date of this order.

---

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

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

DATE: September 28, 2017

DocuSigned by:
Penelope S. Pahl
B3DF836E5DA94F2...

PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings