BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>KERN COUNTY SUPERINTENDENT OF SCHOOLS, VALLEY OAKS CHARTER SCHOOL TEHACHAPI . | OAH Case No. 2018050310<br><br>ORDER DETERMINING DUE PROCESS COMPLAINT SUFFICIENT |

On June 27, 2018, Student filed an amended Due Process Hearing Request[1] (amended complaint) with the Office of Administrative Hearings naming Kern County Superintendent of Schools and Valley Oaks Charter School Tehachapi. On June 27, 2018, Kern filed a Notice of Insufficiency as to each of the seven issues alleged in Student's amended 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

Student's amended complaint alleges seven issues, sufficiently pled, as discussed below. Issues 1 through 4 relate to District's alleged failure to offer[2] Student an appropriate placement and services to address her needs requiring residential placement, transition planning, extended school year services, and speech and language services. Issue 5 relates to District's alleged denial of parental participation at the May 24, 2018 IEP team meeting. Issue 6 relates to District's alleged failure to file a request for due process hearing when it denied Student's requests for independent educational evaluations made at the May 24, 2018 IEP team meeting. Issue 7 relates to District's alleged failure to address Student's seriously maladaptive behaviors.

Student's amended complaint chronicles her history of having schizoaffective disorder, autistic disorder, social phobia, active psychosis, and serious emotional disturbance, leading to a prior due process decision, which ordered placement in a residential treatment center. Student aged out of her residential treatment center placement, leading to a dispute regarding either a new residential placement or services offered to replace components of a residential program. Student's amended complaint also alleges a request for a functional behavior assessment at her May 24, 2018 IEP, "based upon multiple reports of inappropriate behavior (such as unwanted hugging)…and her failure to have developed needed adaptive behaviors, such as maintained eye contact during verbal communications, and appropriate volume-level, tone and pitch of speech, medication routine, response to verbal communication…" Student further alleges a need for individual therapy so that, "her paranoia and social discomfort could be taught before it had resulted in a crisis, so that she

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[2] Student's amended complaint uses the term "provided" in her statement of issues. Factual allegations describe the problem and facts relating to the problem arise from District's alleged failure to "offer" appropriate placement and services in individualized education programs dating back to July 7, 2017.

can learn disability-management techniques to better prepare her to matriculate after high school safely and successfully."

Student's remedies include reimbursement for particular types of expenses, funding for specific services, compensatory services, an independent educational evaluation, fund a transition assessment, and hold an IEP to develop transition plan.

The facts alleged in Student's amended complaint, Issue 1 through 7, are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's amended complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation and to prepare for hearing.

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: July 3, 2018

DocuSigned by:

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings