BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018040003
v.	ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT
SOUTHERN KERN UNIFIED SCHOOL DISTRICT.	

On March 30, 2018 Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Southern Kern Unified School District. On April 4, 2018, Southern Kern filed a notice of insufficiency 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.)

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,

[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).

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 alleges one claim in the complaint, which is insufficiently pled as discussed below.

Student's sole issue reads "Pursuant to a recent Independent Education Evaluation, Student was diagnosed as intellectually disabled. School failed to properly diagnose her to date, has mislabeled her as "emotionally disabled" and, as such, has failed to provide her FAPE [free appropriate public education]."

Student's complaint included no facts on which to base her complaint upon. Student merely provided an issue statement with no description of the problem and the facts relating to the problem. Student's complaint consisted of the two-sentence issue statement and a proposed resolution that asks 12 years of compensatory education, a request for accommodations appropriate to her newly diagnosed disability, asks Southern Kern to convene and IEP meeting to set appropriate goals in line with her disability, and attorney's fees and costs.

The complaint does not contain information as to what is her current special education eligibility, who diagnosed her with a different disability, her age, the time period at issue, or whether Student intends to attempt to pierce the statute of limitations. For example, Student alleges that a new disability was diagnosed in a recent independent educational evaluation, but she provides no date when the evaluation was performed, nor does she disclose who performed the evaluation. She does not explain why her previous individualized education programs did not provide her with a FAPE, other than the bare statement that she now has a new diagnosis. Simply put, there are no facts present to put Southern Kern on notice as to which IEP or for which school year or school years Student is seeking a remedy.

Student's complaint is insufficiently pled in that it fails to provide Southern Kern with any of the required notice of a description of the problem and the facts relating to the problem.

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 14 days from the date of this order.

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: April 6, 2018

DocuSigned by:
Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings

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