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 No. 2019030870 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 21, 2019, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Southern Kern Unified School District. On April 2, 2019, 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, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the

[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).

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

Southern Kern challenges the sufficiency of Student's claims numbered: 1, 1(B), 1(C), 1(D), 1(E), 1(F), 1(G), 1(H)(i-vii), 1(I), 1(J), 1(K), 1(L), 1(M), 1(N), 1(O), 1(P), and 1(Q), some of which are sufficient and some which are insufficient. The issues are discussed below.

Issues 1(H)(iv) and 1(Q) are sufficiently pled to put Southern Kern on notice as to the basis of Student's claims.

Although Student mentions a number of IEPs in the educational history portion of his complaint, he fails to reference any dates or identify any particular IEPs in issues numbered 1, 1(B), 1(D), 1(E), 1(F), 1(G), 1(H)(i), 1(H)(ii), 1(H)(iii), 1(H)(v), 1(H)(vi), 1(H)(vii), 1(I), 1(J), 1(N), 1(M), 1(O), and 1(P). Because of this, the issues are ambiguous and lack adequate specificity as to time as currently pled.

Issue 1(C) is vague as to what "program and services" were decided outside of any IEP meeting. Without some specificity as to the phrase "program and services", the issue fails to provide an adequate description of the nature of the problem and is insufficient.

Issue 1(K) is vague as to the term "services" and whether it refers to an offer or implementation of services. Therefore, issue 1(k) also fails to provide the required description of the problem and is insufficient.

Student provides neither a description nor includes any facts in support of Issue 1(L). Without facts, it is unclear how Southern Kern can understand this contention in order to prepare for this matter. Issue 1(L), therefore, is insufficiently pled.

Issue 1(N) is vague as to the specific evaluation complained of. According to the complaint, multiple evaluations were conducted. Thus, it is unclear which evaluation is at issue. Accordingly, Issue 1(N) is insufficient.

ORDER

1. Issues 1(H)(iv) and 1(Q) of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 1, 1(B), I(C), 1(D), 1(E), 1(F), 1(G), 1(H)(i), 1(H)(ii), 1(H)(iii), 1(H)(v), 1(H)(vi), 1(H)(vii), 1(I), 1(J), 1(K), 1(L), 1(M), 1(N), 1(O), and 1(P), of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues I(A), 1(H)(iv), I(Q), 1(R), 1(S) and 1(T) in Student's complaint.

DATE: April 4, 2019

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings

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