

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

KERN COUNTY SUPERINTENDENT OF
SCHOOLS.

OAH Case No. 2016020341

ORDER DENYING NOTICE OF
INSUFFICIENCY AND FINDING
COMPLAINT SUFFICIENT

On February 02, 2016, Student filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings naming Ker County Superintendent of Schools (District). On February 10, 2016, District timely filed a Notice of Insufficiency as to Student's complaint. For the reasons stated below, the NOI is denied.

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's complaint alleges the following facts: prior to March 31, 2014, Student attended a District homeschool-based charter program that included some time in a school setting; she was medically diagnosed with depression, irritable bowel syndrome, and h-pylori in 2012; in December 2013, Student's father reported Student's emotional difficulties to the principal and one of Student's teachers; Father made a written request to District to assess Student for eligibility for special education on March 31, 2014; Father repeated his request on April 24, 2014; also on April 24, 2014 Father received notice that District placed Student on academic probation for not meeting the terms of the school's master agreement; District's special education director received a signed assessment plan on May 12, 2014; Student's probation ended on May 24, 2014; District dis-enrolled Student from the charter school on June 13, 2014 and reinstated her enrollment on September 2, 2014, after school had started, resulting in a delay in the start of assessments; District conducted assessments of Student from September 2 to September 9, 2014 and after September 22, 2014; District held an individualized education plan meeting on September 16, 2014, and found her eligible for special education and promised a behavior support plan, which District did not provide; District held another IEP meeting on November 21, 2014, adding social emotional support services to Student's IEP; and Parents notified District Student's academic progress was regressing in the spring 2015 semester. Student's complaint alleges three issues which this Order identifies as Issues One, Two and Three.

Issue One, when considered in the context of the complaint in its entirety, alleges that District denied Student a FAPE from February 3, 2014, by failing to timely assess Student for eligibility for special education after Father requested the assessment. Student has stated enough facts in the complaint to put District on notice of the claim, and prepare for and participate in a resolution session and mediation.

Issue Two claims District failed to offer home hospital instruction from and after February 3, 2014, when she was too ill to attend classes. Although vague as to time, Issue Two is sufficiently pled to provide "an awareness and understanding of the issues forming the basis of the complaint."

Issue Three claims District failed from February 3, 2014 to offer an IEP reasonably calculated to render educational benefit. The only supporting facts allude to District's promise in September 2014 to add a behavior support plan to the September 16, 2014 IEP, which it allegedly did not do. Accordingly, Issue Three is considered to allege the failure of the September 16, 2014 IEP to offer appropriate behavioral services, and as such is sufficiently pled to provide "an awareness and understanding of the issues forming the basis of the complaint."

Student's proposed resolution seeks compensatory education in the areas of mental health, behavior and academic support. The resolutions are sufficiently pled.

ORDER

Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii). All dates shall proceed as calendared.

DATE: February 16, 2016

DocuSigned by:

Adrienne L. Krikorian

ADRIENNE L. KRIKORIAN

Administrative Hearing Judge

Office of Administrative Hearings