

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NORRIS SCHOOL DISTRICT and KERN
HIGH SCHOOL DISTRICT.

OAH Case No. 2015090125

ORDER GRANTING STUDENT'S
MOTION TO WITHDRAW ISSUES;
ORDER DETERMINING NOTICE OF
INSUFFICIENCY TO BE MOOT

On September 1, 2015 Student filed a Due Process Hearing Request¹ (complaint) naming the Norris School District and the Kern High School District.

On September 15, 2015, Kern timely filed a Notice of Insufficiency as to the parts of Student's complaint alleging a denial of a free appropriate public education for the 2016-2017 school year.

On September 17, 2015, Student filed a motion to withdraw his issues as to the 2016-2017 school year, stating that any reference to that school year was a typographical error.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² 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 FAPE to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

known and available to the party at the time.³ 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.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ 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.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint alleges several claims against both school districts. The notice of insufficiency Kern filed relates to issues B and C of the complaint. In issue B, Student contends, inter alia, that his individualized education programs for the 2016-2017 school year failed to state accurate present levels of performance and failed to provide measurable annual goals, thereby denying him a free appropriate public education. In issue C, Student contends, inter alia, that Kern failed to offer him a FAPE for the 2016-2017 school year. However, Student failed to state any facts in support of these allegations.

Student has subsequently moved to withdraw the allegations as the reference to the 2016-2017 school year was a typographical error. Student’s motion is granted.

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Since Student has withdrawn all references to the 2016-2017, Kern's notice of insufficiency is moot.

ORDER

1. Student's motion to withdraw the allegations in his complaint relating to the 2016-2017 school year is granted.

2. The remaining issues in Student's complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).

3. Kern's notice of insufficiency is moot. This matter shall proceed as to the remaining issues in Student's complaint. All dates shall remain as presently calendared.

DATE: September 17, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings