BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015091090
v.	ORDER DETERMINING INSUFFICIENCY OF SECOND AMENDED COMPLAINT
CALIFORNIA VIRTUAL ACADEMIES.	

On September 23, 2015, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming California Virtual Academies at Los Angeles as the respondent. On October 20, 2015, Student filed a first amended complaint. On November 4, 2015, Student filed a second amended complaint. As a result, Student's November 4, 2015, second amended complaint is the controlling complaint.[2] On November 16, 2015, CAVA filed a notice of insufficiency. This Order addresses the insufficiency of the currently active second amended complaint that was filed on November 4, 2015.

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).

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[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).

[2] In a similar case, Case No. 2015090988, Student's sibling also filed an amended complaint. On November 6, 2015, OAH served an "Order regarding ambiguous filings and directing Student to file second amended complaint, if Student desires to revive abandoned claims." Although the same Order was not served in this case, the law set forth in the November 6, 2015, Order also applies in this case. Simply stated, the filing of the second amended complaint had the effect of replacing the claims/issues stated in the first amended complaint which had the effect of replacing the claims/issues stated in the original complaint. As a result, the second amended complaint, the controlling complaint, contains only those claims/issues stated in the second amended complaint.

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 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 November 4, 2015, second amended complaint contains various allegations and issues, none of which are sufficiently pled. Student's second amended complaint is insufficiently pled because the second amended complaint fails to set forth distinct issues and fails to provide CAVA with the required notice of a description of the problem(s) and the facts relating to the problem(s). Importantly, the claim(s) fail to answer the questions, "who, what, how, and when." For example, the allegations set forth in the second amended complaint make it impossible to determine the time and dates as to the facts and/or issue(s). Additionally, it is unclear whether Student intends to raise the issues that were set forth in the previous complaints but were omitted in the November 4, 2015, second amended complaint.

If Student files a third amended complaint, the third amended complaint must state, in one document, all issues and allegations that Student claims against CAVA. Student should separately number and briefly set forth each issue. Additionally, each issue should contain specific dates (e.g. from what date until what date the alleged actions happened). The third amended complaint should also allege facts that relate to each issue as well as a proposed resolution for each issue.

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to work with a mediator assigned by OAH for assistance if they intend to amend their due process hearing request. The mediator may not provide legal advice but may assist Parents to ensure compliance with requirements in order to proceed with mediation and due process.

Additionally, a parent who is not represented by an attorney is encouraged to visit the Special Education Section of the Office of Administrative Hearings Website at: http://www.dgs.ca.gov/oah/SpecialEducation.aspx. The website contains a published guide that provides information related to due process hearings as well as forms, including a Request for Mediation and Due Process Hearing form.

ORDER

1. Student's second amended complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).

2. Student shall be permitted to file a third amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II). Student must separately and briefly identify each and every issue Student alleges against CAVA.

3. The third 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. Student must provide CAVA with an identical copy of what Student sends to OAH, via fax or mail, along with proof that Student provided such an identical copy with OAH.

5. If Student fails to file a timely third amended complaint, the second amended complaint will be dismissed and the matter will be closed.

6. All dates previously set in this matter are vacated.

DATE: November 20, 2015

/s/

JAMIE ERRECART
Administrative Law Judge
Office of Administrative Hearings