BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGO UNIFIED SCHOOL DISTRICT AND OLD TOWN ACADEMY.	OAH Case No. 2017011026 ORDER GRANTING NOTICE OF INSUFFICIENCY AND DENYING MOTION TO DISMISS COMPLAINT

On January 27, 2017 Parent on behalf of Student (Student) filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming San Diego Unified School District (San Diego) and Old Town Academy (Charter). On March 10, 2017, Student filed an amended complaint. On March 16, 2017, San Diego filed a motion to dismiss it as a party from the amended complaint or alternatively a notice of insufficiency. OAH did not receive a response from Student.

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.)

[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).

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 complaint asserts that Student "was eligible to attend school" at San Diego. Student also alleges San Diego held Student's initial individualized education program on January 30, 2014. Student makes no factual assertions as to whether San Diego is the local educational agency responsible for the development and implementation of Student's educational program. Student alleges that Student attended Charter during the 2014-2015 and 2015-2016 school years. Thereafter, Student refers to both entities collectively as "District" and all factual allegations are made with reference to "District." Student does not allege when Student began attending Charter, whether or when Student attended a San Diego school, or any specific allegations of fact as to what specific acts or failures to act are attributable to San Diego as opposed to Charter during the relevant statutory period. The proposed resolutions seek reimbursement, training by "District" for faculty and staff of Charter, and independent educational evaluations.

The complaint fails to state sufficient facts that give either responding party an awareness and understanding of the issues and proposed resolutions in the complaint as they pertain to each party such that San Diego and Charter can prepare for a resolution session and mediation. The complaint is insufficiently pled to identify the issues as they pertain to San Diego or Charter. Accordingly, San Diego's notice of insufficiency is granted.

Student may amend the complaint. The amended complaint should clearly identify the factual allegations and claims as to each of the named responding parties. If Student fails to timely file an amended complaint, OAH shall dismiss the complaint. This Order renders San Diego's motion to dismiss San Diego as a party to the complaint as moot.

ORDER

1. Student's amended 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 calendar 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: March 29, 2017

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings

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