BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. COMMUNITY COLLABORATIVE CHARTER SCHOOL, and ACTON-AGUA DULCE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018011148 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On January 29, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Community Collaborative Charter School and Acton-Agua Dulce Unified School District. On February 13, 2018, Charter School 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,

[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 is 26 pages long and contains 67 numbered paragraphs. Paragraphs 1 through 54 contain a narrative with three separate sections concerning three consecutive school years, beginning with the 2015-2016 school year, and concluding with the 2017 school year to the date of the filing of the complaint. However, in several sections of the complaint relating to specific school years, there is information concerning other dates that either precede, or follow the school year being discussed. Thus it is difficult to discern the specific facts related to Student's issues. In addition, there is a section of the complaint devoted to the 2016-2017 school year which contains allegations of procedural and substantive violations during this school year. However, this time period is not encompassed by either of Student's two issues.

Student's Issue 1, precedes paragraph 56, and states, "From January 29, 2016 to July 1, 2016, the CCCS [Community Collaborative Charter School] and AADUSD [Acton-Agua Dulce Unified School District] procedurally and substantively denied [Student] a free and appropriate public education." Paragraph 56 is a statement that paragraphs 1 through 54 are incorporated by reference. The incorporation by reference of 54 previous paragraphs renders this issue vague and confusing. Further, paragraphs 57 and 58 claim Charter School and Acton-Agua Dulce "failed to consistently implement" Student's related services in the areas of speech and language, and occupational therapy services. The section of the complaint concerning the 2015-2016 school year, includes paragraph 19, which states "On or about April 26, 2017, CCCS stopped implementing in home related services in the areas of Occupational Therapy and Speech." April 26, 2017, is not a date encompassed in the 2015-2016 school year. Additional paragraphs related to Issue 1 make reference to IEP's purportedly developed on September 26, 2016, and January 26, 2017. These dates are not encompassed by the time period stated in Issue 1. Student's Issue 1 is insufficiently pled because the information included is unrelated to the school years at issue, and is vague and confusing to a degree that respondents do not have an awareness and understanding of the issues forming the basis of the complaint.

Student's Issue 2 states "From July 1, 2017 to the present CCCS failed to provide [Student] with a FAPE resulting in a lack of educational benefit." Paragraph 64, which

follows this statement of the issue, incorporates by reference paragraphs 1 through 62. The incorporation by reference of 62 previous paragraphs renders this issue vague and confusing. Paragraphs 30 through 41 in the complaint discuss the 2017-2018 school year. However, reference is made in paragraph 36 to an annual IEP team meeting on January 25, 2017, a date that precedes the 2017-2018 school year. Lettered subparagraphs A though E follow paragraph 64, asserting both procedural and substantive violations, which are not entirely clear from reading the complaint. For example, subparagraphs D and E concern failure to provide speech and language, and occupational therapy services. However, this information is not contained in paragraphs 30-41, concerning the 2017-2018 school year. Student's Issue 2 is insufficiently pled as respondents do not have an awareness and understanding of the issues forming the basis of the complaint

The Charter School's notice of insufficiency also challenges Student's proposed resolutions. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Student's 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 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: February 15, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

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