BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CALIFORNIA VIRTUAL ACADEMY, EAST SAN GABRIEL VALLEY SELPA, WEST COVINA UNIFIED SCHOOL DISTRICT	OAH CASE NO. 2013030131 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On March 4, 2013 Student filed a Due Process Hearing Request[1] (complaint) naming California Virtual Academy (CVA), East San Gabriel Valley Special Education Local Plan Area (SELPA), and West Covina Unified School District (District) as respondents.

On March 19, 2013, CVA filed a Notice of Insufficiency (NOI) as to the complaint.

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 free appropriate public education (FAPE) 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.[3] These

[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).

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

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

The complaint makes two claims, alleging (1) that CVA did not comply with state and federal procedures, thereby denying Student a free appropriate public education (FAPE), and (2) that CVA teachers were not provided with copies of Student's individualized education programs (IEP's). The first claim is adequately stated and contains sufficient factual background to permit CVA to respond to the complaint and participate in a resolution session and mediation. Therefore, Student's statement of the first claim is sufficient As discussed below, however, the second claim is insufficiently stated, as it contains no factual background pertaining to it; the NOI as to the second claim is therefore granted.

As background, the complaint presents facts pertaining to Student's enrollment at CVA and her prior placements. Within the statute of limitations period, it alleges that a March 4, 2011, IEP made an offer of certain accommodations that were made conditional upon parent signing an untrue sworn statement. The complaint alleges that between March

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[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).

and June 2011, CVA continued to insist on the sworn statement by parent, removed a scribe accommodation that had been offered, failed to review an independent assessment that had been performed, made untrue statements regarding parental consent to the goals in the March 2011 IEP, and refused to hold an amendment IEP when requested by parent in response to a poor report card. The complaint alleges that in August, 2011, Student's online access to CVA's system was terminated, effectively terminating all services to her for a month. The complaint alleges that an October 17, 2011, IEP inappropriately refused to enroll Student, refused to make notation of parents comments in the IEP document, and made an offer of placement in West Covina without proper participants being present at the IEP meeting. The complaint alleges that a January 20, 2012, IEP denied parental participation, failed to make any offer of placement, and that Student was thereafter disenrolled from CVA.

Student's complaint identifies the issues and adequate related facts to permit CVA to respond to the first issue in the complaint, that CVA committed procedural violations resulting in a denial of FAPE. Therefore, Student's statement of the first claim is sufficient.

As to the second claim, however, that CVA teachers were not provided a copy of Student's IEP, there are absolutely no factual allegations in the complaint in support of this claim. None of the factual allegations pertain to any CVA teachers not being provided a copy of an IEP, nor is it alleged which IEP is being referred to, nor what time period is at issue. The claim, as stated, bears no relation to any of the factual allegations in the complaint. For this reason, the second claim does not identify the issues and adequate related facts to permit CVA to respond to it, and thus it is insufficient.

ORDER

1. Issue1 of Student's complaint is sufficient, as against CVA, under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. Issue 2 of Student's complaint is insufficiently pled as against CVA under Title 20 United States Code section 1415(c)(2)(D).

3. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[8]

4. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

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

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue 1 in Student's complaint.

Dated: March 21, 2013

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings