BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT AND LOS ANGELES ASPIRE TITAN ACADEMY.	OAH Case No. 2017110429 ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

On November 3, 2017, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings naming Los Angeles Unified School District and Los Angeles Aspire Titan Academy, a Charter School.

On November 9, 2017, Charter filed a Notice of Insufficiency as to Student's complaint. Charter argues that Student's complaint is insufficient because all of the issues and proposed resolutions are alleged solely against District. Charter contends Student's complaint does not provide Charter with notice of the issues forming the basis of the complaint against it, and that Charter lacks the information necessary to enable it to adequately respond or prepare a defense. Charter claims that Student did not enroll at Aspire until August 30, 2017 and it was not responsible for Student prior to that date.

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, *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 alleges five categories of claims in the complaint, which are all insufficiently pled against Charter as discussed below. Student alleges that he attended District school since the 2011-2012 school year, but subsequently enrolled at Charter for the 2017-2018 school year because District ignored Student's academic needs. Student's complaint alleges "District": (1) failed to fulfill its "child find" duties since November 2015; (2) failed to appropriate assess him in all areas of suspected disability since November 2015; (3) failed to design and implement an individualized education program since November 2015; (4) engaged in procedural violations since November 2015, which included District's failure to provide prior written notice and caused Parent to enroll Student in Charter; and (5) failed to provide Charter with Student's educational records.

Although the complaint mentions Charter in a few places, the claims are specifically directed only against District. To the extend Student intended to allege claims against Charter, the complaint is vague and confusing. Student inconsistently states independent assessments were secured in July 2017 because Charter ignored Parent's assessment requests, but according to the complaint, Student did not enroll at Charter until after those assessments were conducted. In addition, Student's claims cover the time period from November 2015, but Student did not enroll at Charter until the 2017-2018 school year. Regarding claims two through five, the complaint fails to contain any charging allegations against Charter. In addition, as proposed resolutions, Student's complaint seeks to have "District" (1) conduct evaluations in all areas of suspected disability; (2) convene an IEP team meeting; and (3) provide compensatory education. The complaint does not allege any relief from Charter.

Student's complaint is insufficiently pled because none of the issues are alleged against Charter and the complaint is vague and confusing. As such, the complaint fails to

provide Charter with the required notice of a description of the problem and the facts relating to the problem. Should Student elect to amend the complaint, Student should separately allege his claims against Charter, if any, including the facts supporting those claims and proposed resolutions as to Charter.

ORDER

1. Student's complaint is insufficient 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).[1]

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, Charter will be dismissed, and the matter will proceed against District on the currently scheduled dates.

DATE: November 14, 2017

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings

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