BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CALIFORNIA VIRTUAL ACADEMIES.	OAH Case No. 2015090988 ORDER DENYING NOTICE OF INSUFFICIENCY

On September 23, 2015, Student filed a request for due process (complaint) naming California Virtual Academies (CAVA). On September 25, 2015, counsel for CAVA timely filed a notice of insufficiency regarding the complaint. The motion is denied for the reasons discussed below.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[1] 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.[2] 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.[3]

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[1] 20 U.S.C. § 1415(b) & (c).

[2] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[3] 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."[4] 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.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

Student's complaint identifies the name of the pupil only in the caption, an assertion District claims is confusing because Parents allegedly filed the same complaint on behalf of a sibling. The identity of the Student in the complaint is sufficient to put District on notice of which Student the complaint in OAH Case Number 2015090988 applies to. Although Student's complaint alternatively refers to "District" and "CVA@LA), the facts can easily be interpreted to mean that Parents' allegations refer to CAVA.

Student alleges that she has been eligible for special education since 2006 based on an unspecified disability; that she enrolled in CAVA, an online virtual educational program, in September 2014; that shortly thereafter CAVA received records from Torrance Unified School District including recent assessments and individualized education programs that included Home Hospital orders; and that in approximately June 2015 CAVA completed assessments and offered an IEP and services that conflicted with Student's prior Home Hospital order; and in August 2015 CAVA refused to reenroll Student in its program. Although the complaint does not identify specifically what placement, services and supports CAVA offered in June 2015, the lack of that detail does not make the complaint insufficient.

Student's contentions give rise to the following issues: 1) Was CAVA, as a charter school, required to provide services to students with disabilities and, in Student's case, did it fail to do so; 2) did CAVA deny Student a free appropriate public education from and after June 4, 2015 by failing to offer Student an appropriate placement and services that considered and were consistent with Student's prior Home Hospital orders; 3) did CAVA

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[4] Sen. Rep. No. 108-185, *supra*, at p. 34.

[5] *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.].

[6] 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).

discriminate against Student and her parents by failing to allow Student to enroll at CAVA for the 2015-2016 school year; 4) did CAVA deny Student a FAPE by failing to allow Student to enroll at CAVA for the 2015-2016 school year; and 5) did CAVA deprive Parents of the opportunity to participate in the development of Student's educational program by failing to convene an IEP meeting after Parents requested one?

Student's proposed resolutions, which are sufficiently pleaded, include that CAVA shall reenroll Student, hold an IEP meeting, and provide services to Student based upon Home Hospital orders.

The complaint sufficiently identifies issues, as described above, under the Individuals with Disabilities Education Act, to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the issues to permit District to respond to the complaint and participate in a resolution session and mediation.

To the extent that District contends that some of the claims as identified above are outside of OAH jurisdiction, or that some of the allegations in the complaint should be stricken, District may file the appropriate motion with OAH on those contentions.

ORDER

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

2. The matter shall proceed to hearing on issues one through five as identified in this Order.

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

DATE: September 28, 2015

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings