BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PHOENIX CHARTER ACADEMY, ACADEMY OF PERSONALIZED LEARNING AND EL DORADO COUNTY CHARTER SPECIAL EDUCATION LOCAL PLAN AREA.	OAH Case No. 2017110498 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On November 9, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Phoenix Charter Academy, Academy of Personalized Learning and El Dorado County Charter Special Education Local Plan Area (SELPA). On November 17, 2017, SELPA filed a Notice of Insufficiency as to Student's complaint.[2]

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

[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).

[2] The SELPA also filed a Motion to Dismiss, which is moot by the granting of this Notice of Insufficiency and will not be ruled upon.

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 two claims in the complaint against SELPA, which are all insufficiently pled as discussed below.

Student's Issue One contends that the Academy of Personalized Learning and the SELPA collectively denied Student a free appropriate public education during the 2015-2016 and extended school year by:

a. failing to provide adequate specialized academic instruction;
b. failing to provide adequate speech and language therapy services;
c. failing to provide occupational therapy services;
d. failing to provide measurable goals in all areas of need;
e. failing to provide adequate accommodations;
f. failing to conduct an assistive technology assessment;
g. failing to make a clear written offer;
h. failing to accurately designate Student's eligibility category and
i. failing to offer or provide Student with adequate ESY services;

Student's Issue Three contends that the Phoenix Charter Academy and the SELPA collectively denied Student a FAPE during the 2017-2018 school year and extended school year by:

a. failing to provide adequate specialized academic instruction;
b. failing to provide adequate speech and language therapy services;

c. failing to provide occupational therapy services;
d. failing to offer or provide measurable goals in all areas of need;
e. failing to offer or provide adequate accommodations;
f. denying Parents meaningful participation in the IEP process;
g. failing to offer or provide Student adequate aide services;
h. failing to convene an IEP team meeting;
i. unilaterally changing Student's placement;
j. failing to offer or provide a transition plan;
k. failing to offer or provide an appropriate placement;
l. failing to implement Student's IEP;
m. constructively expelling Student from school;
n. failing to convene Student's annual IEP team meeting; and
o. failing to provide Student an interim placement offer.

Student contends a collective responsibility of the SELPA and the Academy of Personalized Learning and the SELPA and the Phoenix Charter Academy. Based upon the face of his complaint, contends only that (1) the IEP documents were printed on SELPA forms; (2) special education services were provided by the SELPA, and (3) on one occasion in 2017, Mother telephoned the SELPA. Student's complaint contains no factual allegations which indicate that the SELPA was a responsible party in determining Student's special education placement, goals or services or made decisions regarding the provision of FAPE to Student. Further, Student in footnotes admits he is unaware of the relationship between the SELPA and each charter school. Student's complaint is insufficiently pled in Issues One and Three as it fails to provide the SELPA with the required notice of a description of the problems and the facts relating to those problems which would tie the SELPA to the problems as alleged against the charter schools.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to the El Dorado County Charter SELPA only.

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

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 as to El Dorado County Charter SELPA only.

---

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

5. All dates previously set in this matter remain as scheduled regarding the Academy of Personalized Learning and the Phoenix Charter Academy.

DATE: November 21, 2017

DocuSigned by:
Judith Pasewark
D4B56EDF1003485...

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings