BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

AVESON GLOBAL LEADERSHIP ACADEMY.

OAH CASE NUMBER 2019120202

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On December 3, 2019, Parent on behalf of Student, filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Aveson Global Leadership Academy. On December 18, 2019, Aveson filed a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

The named parties have the right to challenge the complaint's sufficiency. (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).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

A complaint is sufficient if it: (1) describes the problem relating to the proposed change regarding the Student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education; (2) includes facts about the problem; and (3) includes a proposed resolution 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 filed the complaint on December 3, 2019, and Aveson filed a notice of insufficiency on December 18, 2019. Thus, Aveson's notice of insufficiency is timely filed.

The facts alleged in Student's complaint are insufficient. Student fails set forth any clear legal claims against Aveson and how any claims relate to student's identification, evaluation, or educational placement, or providing the Student a free appropriate public education, known as FAPE.

Student's complaint is comprised of a statement of facts, problem or complaint, and proposed resolution. Nowhere in the complaint does Student clearly set forth any legal claims. Instead, Student includes a seven-page narrative that intertwines both factual allegations and legal arguments that are unclear and confusing as to what the actual violations under the Individuals with Disabilities Act entail. As written, the complaint is vague, overly broad, and insufficient. Student's narrative could potentially include a multitude of separate causes of action against Aveson, including both substantive and procedural violations. Additionally, the narrative includes allegations that could be construed as outside of OAH's jurisdiction. As currently stated, it is impossible to discern what legal violations are raised against Aveson.

Student's complaint is insufficiently pled because he failed to give the requisite notice as to the description of the nature of the problem and facts related to that problem forming the basis of the complaint. Student is advised to enumerate separate legal claims as to separate violations under the Individuals with Disabilities Act, or include separate sub-issues for each violation.

A parent without an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

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

1. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
2. 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.
3. If Student fails to file a timely amended complaint, the complaint will be dismissed.
4. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

DocuSigned by:
Cynthia Fritz
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DATED: December 20, 2019

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings