BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH SCHOOL DISTRICT AND OPTIONS FOR YOUTH-VICTOR VALLEY CHARTER SCHOOL.

OAH CASE NUMBER 2023080453

ORDER DETERMINING DUE PROCESS COMPLAINT INSUFFICIENT

SEPTEMBER 1, 2023

On August 14, 2023, Parents on behalf of Student, filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH, naming Victor Valley Union High School District and Options for Youth-Victor Valley Charter School. On August 29, 2023, Option for Youth-Victor Valley Charter School filed a notice of insufficiency as to the complaint. Student filed opposition on August 30, 2023.

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).

OPTIONS FOR YOUTH FILED A TIMELY NOTICE OF INSUFFIIENCY

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).) Options for Youth-Victor Valley Charter School, called Options for Youth, filed its notice of insufficiency within 15 days of receiving the complaint. Thus, Options for Youth timely filed a notice of insufficiency.

STUDENT'S COMPLAINT IS INSUFFICIENT AS TO OPTIONS FOR YOUTH

Options for Youth contends that Student's complaint is insufficient because: Student failed to identify how Options for Youth was responsible for the issues; and the complaint contains contradictory allegations and facts. Student asserts that the complaint is sufficiently pled as to Options for Youth and provide sufficient legal notice to permit it to effectively participate in this matter.

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.)

Student's complaint alleges three insufficiently pled claims. Student's complaint alleges issues against Victor Valley Union High School District and Option For Youth, which are collectively referred to as respondents. The complaint asserts that the respondents denied Student a free appropriate public education, called FAPE, from August 14, 2023 to the present by:

1. failing to assess;
2. failing to develop and implement an individual educational program, called IEP, uniquely tailored, and reasonably calculated to provide FAPE; and
3. violating Parent's rights to meaningful participation.

STUDENT FAILED TO DESIGNATE AT WHAT TIME EACH RESPONDENT WAS RESPONSIBLE FOR FAPE FROM AUGUST 14, 2023, TO THE PRESENT.

Throughout the complaint, Student asserts broad allegations against respondents but failed to delineate specific time periods of either respondent's responsibility for FAPE. Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56502, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, a nonprofit public charter school that is not otherwise included as a local educational agency, or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Unlike a school district, a charter school's FAPE obligation turns on attendance, not residency or enrollment. Normally, a minor student attends the public school of the parents' residence. (Ed. Code, § 48200.) A school district is responsible for providing a FAPE to all eligible students between the ages of six and eighteen whose parent or legal guardian resides within the jurisdictional boundaries of the school district, subject to several specified exceptions. (Union School District v. Smith (9th Cir.1994) 15 F.3d 1519, 1525, fn. 1.)

Conversely, a charter school is one "to which parents choose to send their children." (20 U.S.C. § 7221i(2)(H).) Thus, a public charter school does not admit students by residency; it admits only volunteers. (Ed. Code, § 47605, subd. (d) Thus, unlike school districts whose obligations toward children with disabilities is tied to parents' residency, a charter school's obligation relies on the choice of parents to send student to a charter school, and student's attendance. (Parent on Behalf of Student v.

Santa Clara County Office of Education, Discovery Charter School II, and Sunnyvale School District , (2020) OAH case number 2019090001.)

Here, Student concedes in the complaint that Student was enrolled in Options for Youth from August 2022 through May 2023, and Victor Valley Union High School District from August 2019 through August 2022, and August 2023 to the present. Thus, both respondents cannot simultaneously be responsible for Student's FAPE from August 14, 2021, to the present, as Student alleged in all three issues in her complaint.

Since Student failed to distinguish any period of responsibly in any of its issues as to Options for Youth, the complaint is overly broad, unclear, confusing, and insufficiently pled. It failed to provide Options for Youth the required notice of a description of the problem to enable it to prepare for mediation, due process hearing, and defend itself in this matter. Accordingly, this flaw renders Student's complaint insufficiently pled in its entirety.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to Options for Youth.
2. Student is permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The amended complaint must comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii) and must 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 Options for Youth.
5. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings