BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT,
NORTH COASTAL CONSORTIUM FOR SPECIAL EDUCATION, AND
SAN DIEGO COUNTY OFFICE OF EDUCATION.

OAH CASE NUMBER 2021050037

# ORDER FINDING AMENDED COMPLAINT INSUFFICIENTLY PLED AS TO SAN DIEGO COUNTY OFFICE OF EDUCATION AND DENYING MOTION TO DISMISS WITHOUT PREJUDICE

JUNE 14, 2021

On April 29, 2021, Parents on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, naming San Dieguito Union High School District, North Coastal Consortium for Special

Education, and San Diego County Office of Education. San Diego County Office of Education is referred to as SDCOE. The Office of Administrative Hearings is referred to as OAH.

On May 17, 2021, OAH found Student's complaint insufficiently pled against North Coastal Consortium for Special Education. OAH permitted Student to file an amended complaint within 14 days of the Order.

On May 20, 2021, SDCOE filed a motion to be dismissed as a party. Student filed an opposition on May 25, 2021. SDCOE filed a reply to the opposition on May 27, 2021.

Student filed an amended complaint, received by OAH on June 1, 2021, naming the same three respondents. On June 2, 2021, OAH issued an order denying SDCOE's motion to be dismissed as a party as moot in light of Student's amended complaint.

On June 10, 2021, SDCOE filed a Notice of Insufficiency combined with a Motion to Dismiss. The parties are advised that OAH addresses single motions filed in a pleading. Here, the Notice of Insufficiency is addressed as the time period to file is limited by statute. The Motion to Dismiss is denied without prejudice to SDCOE's right to file a separate motion.

Student filed an opposition to SDCOE's motion on June 11, 2021.

## 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).

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's amended complaint alleges two issues against SDCOE, each of which is insufficiently pled. The issues are discussed below.

A public agency involved in decisions regarding a student is a proper party to a due process hearing procedure. (Ed. Code, § 56501, sub. (a).) The amended complaint contains approximately 39 pages of factual allegations. It asserts SDCOE is the Administrative Unit or agent of the North Coastal Consortium for Special Education and oversees the provision of special education by its member districts and receives and disburses special education funding. No facts are alleged that SDCOE was involved in the identification, evaluation or educational placement of Student or the provision of a free appropriate public education, referred to as FAPE as required by the Education Code. (*Id.*)

Issue One alleges SDCOE and each of the other respondents failed in their child find duties, failed to provide Parents mandated information after Student was enrolled in private school, failed to ensure Student's 2018 triennial IEP was timely conducted and failed to maintain accurate records. The amended complaint fails to assert any facts that SDCOE was responsible for child find or providing a free appropriate public education to Student. Therefore, Issue One is insufficiently pled for failure to state sufficient facts.

Issue Two alleges SDCOE failed to ensure Student's triennial IEP was conducted and to use appropriate accommodations to assess Student. The complaint refers to a triennial assessment report dated October 30, 2020 conducted by San Dieguito Unified High School District, but alleges no facts showing SDCOE took actions or was involved in the assessments or development of Student's IEPs. Issue Two fails to include facts establishing how this claim involves Student's identification, evaluation, educational placement or the provision of FAPE. These omissions render the complaint vague and confusing. The complaint fails to provide SDCOE the basic information necessary to know how to participate in a resolution session and mediation or prepare for a due process hearing. Accordingly, it is deemed insufficient as to SDCOE.

ORDER

1. Student's amended complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D) as to SDCOE.
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
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, SDCOE will be dismissed as a party.
5. SDCOE's Motion to Dismiss is denied without prejudice.
6. All currently scheduled dates shall remain on calendar.

IT IS SO ORDERED.

*Jennifer Kelly*

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings