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 NORTH COASTAL CONSORTIUM FOR SPECIAL EDUCATION AND DENYING STUDENT'S MOTION FOR RECONSIDERATION AS MOOT

JUNE 09, 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. North Coastal Consortium for

Special Education is referred to as North Coastal Consortium. 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. OAH permitted Student to file an amended complaint within 14 days of the Order.

On May 28, 2021, Student filed a Request for Reconsideration of OAH's May 17, 2021. Student filed an amended complaint on May 31, 2021.

North Coastal Consortium filed a Notice of Insufficiency as to Student's amended complaint on June 8, 2021. Student filed an opposition, with attachments, on June 9, 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 complaint alleges two issues as to North Coastal Consortium, each of which is insufficiently pled. The substance of Student's complaint is almost identical to the complaint determined insufficient in OAH's May 17, 2021 Order, with the exception of Student combining the issues of the failure to assess and failure to develop an individualized education program, resulting in two rather than three issues as to North Coastal Consortium. The issues are discussed below.

North Coastal Consortium is a special local plan area, or SELPA and is expressly included in the Education Code definition of a public agency. (Ed. Code, §§ 56500 and

56028.5.) To be a proper party for a due process hearing, it must also have been responsible for any decisions regarding Student. (Ed. Code, § 56501, sub. (a).) Student's complaint names North Coastal Consortium as a responsible public agency. However, the complaint does not allege how North Coastal Consortium was responsible for finding Student eligible for special education, assessing Student or for providing educational supports and services to Student at San Dieguito Unified high School District, Student's alleged school district of residence.

Throughout the complaint, Student conflates North Coastal Consortium's oversight responsibilities as the SELPA for both San Dieguito Union High School District and the feeder elementary schools previously attended by Student with the obligation to provide special education or related services to Student. Student does not allege specific facts relating to a proposed change regarding Student's identification, evaluation, educational placement or provision of a free appropriate public education, referred to as FAPE, by North Coastal Consortium. Student does not assert facts showing that North Coastal Consortium was responsible for providing special education services to Student or was involved in decisions regarding Student's educational programs beyond its mere oversight role, and Student instead relies on a respondeat superior legal argument.

Issue One alleges North Coastal Consortium owed a Child Find duty to Student. In support of this allegation, Student refers to North Coastal Consortium's local plan which confirms its obligation to have in effect policies, procedures and programs that ensure individuals with disabilities who reside in its member districts are identified, located and assessed. Student alleges North Coastal Consortium's provision of services, staffing, training and other supports to its member districts demonstrates it owes a Child Find duty to Student beyond more than an oversight role. The complaint alleges a

variety of other alleged acts of mismanagement, such as failing to sufficiently oversee its member districts, failure to ensure its member districts complied with their Child Find obligations and causing a database error that prevented its member districts to locate Student. None of these allegations describe how North Coastal Consortium was the local education agency responsible for Student's education. Therefore, Student's Issue One is insufficiently pled for failure to state sufficient facts.

Issue Two alleges North Coastal Consortium failed to timely conduct assessments of Student, neglected to use appropriate accommodations to assess Student during the COVID-19 pandemic and failed to develop an appropriate individualized education program designed to offer Student a FAPE. The complaint refers to a triennial assessment report dated October 30, 2020 conducted by San Dieguito Unified High School District. None of the allegations of the complaint state North Coastal Consortium took actions with respect to the assessments or the development of Student's IEPs. The 60-page complaint is devoid of specific facts showing how North Coastal Consortium was involved in decisions regarding Student's special education program or related services. Student alleges that a Program Specialist from North Coastal Consortium attended some of his IEP team meetings but alleges no facts that the Program Representative attended for oversight purposes or as a member of the IEP team. Therefore, Student's Issue Two is insufficiently pled for failure to state sufficient facts.

Student's amended complaint is insufficiently pled as to North Coastal Consortium. The amended complaint fails to provide North Coastal Consortium with the required problem description and the facts relating to the problem.

In light of Student's amended complaint, Student's Motion for Reconsideration of OAH's May 17, 2021 Order Finding Complaint Insufficiently Pled as to North Coastal Consortium for Special Education is moot.

ORDER

1. Student's amended complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D), as to North Coastal Consortium for Special Education.
2. Issues One and Two of the Complaint are hereby dismissed as to North Coastal Consortium only.
3. Student's amended complaint fails to correct the deficiencies stated in OAH May 17, 2021 Order, and therefore no further leave to amend shall be granted.
4. The hearing shall proceed only as to San Dieguito Union High School District and San Diego County Office of Education.
5. Student's Motion for Reconsideration of OAH's May 17, 2021 Order Finding Complaint Insufficiently Pled as to North Coastal Consortium for Special Education is moot in light of Student's amended complaint.
6. All currently scheduled dates shall remain on calendar.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings