BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SOUTHERN KERN SCHOOL DISTRICT AND KERN COUNTY CONSORTIUM SELPA.	OAH Case No. 2018041327 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On April 27, 2018, Student filed a due process hearing request[1] (complaint) with the Office of Administrative Hearings naming Southern Kern Unified School District and the Kern County Consortium Special Education Local Plan Area. On May 2, 2018, Consortium filed a notice of insufficiency as to Student's complaint.

Consortium's notice of insufficiency claims that Student's complaint neither mentions it in any of the causes of action nor identifies it in any factual allegations. It further states that Consortium is listed in the complaint caption only and no mention, reference or description of it is found in the body of the complaint. Thus, Consortium alleges that the complaint is insufficient.

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.

[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).

§ 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 names Consortium as a respondent in the caption, however, it is not named in the body of the complaint. Moreover, no causes of action or factual allegations mention or discuss Consortium. In fact, the only place in the complaint that Consortium is mentioned is in the caption. Student does not specify any allegations of fact as to what specific acts or failures to act are attributable to Consortium, and the proposed resolutions request relief from Southern Kern Unified School District only, not Consortium. Because of this, the complaint fails to state sufficient facts that give Consortium an awareness and understanding of the issues and proposed resolutions as they pertain to it such that can be used to prepare for a resolution session, mediation and hearing. Thus, the complaint is insufficiently pled as to Consortium.

ORDER

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

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

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. The amended complaint shall specify the issues and proposed resolutions as they pertain to Consortium and each responding party.

5. If Student fails to file a timely amended complaint, Consortium will be dismissed as a party.

6. All dates previously set in this matter are vacated as to Consortium only.

DATE: May 4, 2018

DocuSigned by:
Cynthia Fritz
3054C9C1F7E040A...

CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings

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