BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ALAMITOS UNIFIED SCHOOL DISTRICT AND GREATER ANAHEIM SPECIAL EDUCATION LOCAL PLAN AREA.	OAH Case No. 2017020097 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT

On February 1, 2017, Student filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Los Alamitos Unified School District, and Greater Anaheim Special Education Local Plan Area. On February 13, 2017, SELPA filed a Notice of Insufficiency as to Student's complaint. Student did not file an opposition to the NOI.

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. § 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

[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).

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 three issues, some of which are sufficient and some which are insufficient. The issues are discussed below.

The facts alleged in Student's Issue One are sufficient to put the SELPA on notice of the issue forming the basis of the complaint. Student's complaint identifies the issue of Child Find and alleges SELPA is a proper party as it "actively and systematically seek out all individuals with exceptional needs, ages birth through 21, including infants and preschoolers and children not enrolled in public school programs that reside in the geographic area or are under the jurisdiction of the special education local plan area." The complaint provides adequate related facts about the problem to permit SELPA to respond to the complaint and participate in a resolution session and mediation.[2]

With regard to Issues Two and Three, Student fails to allege any factual basis SELPA's involvement in the provision of a free appropriate public education to Student. Therefore, Student has failed to state sufficient facts' supporting this claim as to SELPA and the claim is insufficient as to SELPA only.

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[2] Notice of Sufficiency does not determine the merits of whether SELPA is a proper party.

ORDER

1. Issue One of Student's complaint is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues Two and Three of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D), as to SELPA only.

3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed on Issues One as to both parties, and on Issues Two and Three as to District only.

DATE: February 14, 2017

DocuSigned by:
Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

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