BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT AND

CAPISTRANO UNIFIED SPECIAL EDUCATION LOCAL PLAN AREA.

OAH CASE NUMBER 2021010454

ORDER FINDING COMPLAINT SUFFICIENTLY PLED AS TO CAPISTRANO UNIFIED, AND INSUFFICIENTLY PLED AS TO SELPA

JANUARY 29, 2021

On January 12, 2021, Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Capistrano Unified School District and "its SELPA." Capistrano Unified School District will be referred to as Capistrano Unified.

On January 14, 2021, Capistrano Unified filed a notice of representation stating that Capistrano Unified Special Education Local Plan Area is a one-district Special Education Local Plan Area, also called a SELPA. Capistrano Unified Special Education Local Plan Area will be referred to as SELPA.

On January 27, 2021, Capistrano Unified and SELPA timely filed a notice of insufficiency as to the complaint.

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.)

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, § 56501, subd. (a).) A public agency is defined as a school district, county office of education, special education local plan area, or any other public agency providing special education or related services to individuals with exceptional needs. (Ed. Code, §§ 56500 and 56028.5.)

DISCUSSION

Student's complaint alleges that Capistrano Unified denied Student a free appropriate public education, called a FAPE, when it breached a settlement agreement by failing to work with Parents to find a mutually agreeable nonpublic school for Student after November 20, 2020, when Student was allegedly no longer able to attend his then-current school. The complaint also alleges that Student was denied a FAPE because Capistrano Unified failed to timely assess Student. As to SELPA, Student alleges that due to SELPA's funding and oversight responsibilities, SELPA should also be held responsible for the denial of FAPE.

The complaint sufficiently describes Capistrano Unified's alleged denial of a FAPE to Student by failing to timely identify and fund an appropriate placement in agreement with Parents, or to timely assess Student. Student's complaint identifies the issues and adequate facts about the problem to permit Capistrano Unified to respond and participate in a resolution session and mediation. Therefore, the facts alleged in Student's complaint are sufficient.

Capistrano Unified alleges that OAH does not have jurisdiction over breach of contract matters, however, that is properly the subject of a motion to dismiss, and not a notice of insufficiency.

Student's complaint is insufficiently pled against SELPA. The complaint fails to provide SELPA with the required problem description and the facts relating to the problem. Student alleges no facts as to how SELPA, in its funding or oversight capacity, is involved in any educational program decisions regarding Student. Student does not allege that SELPA provides special education or related services directly to Student. Student does not allege any facts demonstrating that SELPA was a party to the settlement agreement, or participated in the alleged breach.

Accordingly, Student's complaint is insufficiently pled as to SELPA.

ORDER

1. Student's complaint is insufficiently pled as to Capistrano Unified Special Education Local Plan Area under section title 20 United States Code 1415(c)(2)(D).
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, the complaint will be dismissed as to Capistrano Unified Special Education Local Plan Area.
5. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii) as to Capistrano Unified School District.
6. All mediation, prehearing conference, and hearing dates in this matter are confirmed for Capistrano Unified School District only.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings