BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENTS ON BEHALF OF STUDENT,<br><br>v.<br><br>LOS ALAMITOS UNIFIED SCHOOL DISTRICT AND GREATER ANAHEIM SELPA | OAH Case No. 2016080449<br><br>ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT |

On August 8, 2016, Parents on behalf of 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. SELPA timely filed a Notice of Insufficiency as to Student's complaint. For the reasons discussed below, the complaint is not sufficient as to respondent SELPA.

## 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).

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.)

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

SELPA claims the complaint is insufficient because it does not provide facts that indicate how or why SELPA is named as a respondent. Student's complaint lists two concerns or issues. Issue One is entitled "Child Find" and asserts that the District and SELPA failed in "it's [*sic*] child find duties to seek and serve students with disabilities, when it failed to identify [Student] as a child with a disability, resulting in a loss of education opportunity for [Student]." Issue Two does not mention SELPA. Earlier in the complaint's Introduction, Student quotes an unidentified source about how the SELPA and its member districts actively and systematically seek out all individuals with exceptional needs who reside in the SELPA's jurisdictional geographic area. Student then asserts that SELPA is therefore a proper party.

In the Statement of Facts, Student generally alleges that he contracted chronic Lyme disease, with symptoms in early 2015, for which District ineffectively assessed Student and provided an inadequate section 504 plan. The facts do not state how or in what manner SELPA was involved or responsible for providing special education or related services to Student. (Ed. Code, §§ 56500 and 56028.5.) A mere assertion that a SELPA works with its member districts in child find efforts is insufficient to put SELPA on notice of how it is a public agency involved in any decisions regarding Student. (Ed. Code, § 56501, subd. (a).)

Student's complaint is insufficiently pled as to SELPA. The complaint is vague and confusing because it fails to provide SELPA with the required notice and description of the problem and related facts, sufficient for SELPA to know how to prepare for the hearing and how to participate in resolution sessions and mediation.

ORDER

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

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. If Student fails to file a timely amended complaint, the hearing shall proceed as to respondent Los Alamitos Unified School District, only.

DATE: August 25, 2016

DocuSigned by:

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings

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