BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

EL DORADO COUNTY CHARTER SPECIAL EDUCATION LOCAL PLAN AREA, ACTON-AGUA DULCE UNIFIED SCHOOL DISTRICT AND ILEAD HYBRID.

OAH CASE NUMBER 2021010694

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT AND DENIAL OF MOTIONS TO DISMISS PARTIES AS MOOT

FEBRUARY 10, 2021

On January 26, 2021, Parent on behalf of Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming El Dorado County Charter Special Education Local Plan Area, Acton-Agua Dulce Unified School District and iLead Hybrid as respondents. On February 9, 2021, Acton-Agua Dulce Unified School District, referred to as Acton-Agua Dulce, and

El Dorado County Charter Special Education Local Plan Area, referred to as El Dorado SELPA, each filed Motion to Dismiss and Notice of Insufficiency. Student filed a response on February 10, 2021.

APPLICABLE LAW

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

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 decision 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 four issues. The issues are discussed below.

Throughout the complaint, Student alleges Action-Agua Dulce is responsible for providing special education services to Student on the basis it is the local educational agency that issued the charter to iLead Hybrid. Student alleges El Dorado SELPA partnered with charter schools, including ILead Hybrid, to provide, "program support, business office support and professional learning for its member schools for purposes of special education," and that all forms and documents used by iLead Hybrid were

developed and managed by EL Dorado SELPA. The complaint does not allege specific facts regarding how Action-Agua Dulce and El Dorado SELPA were responsible for providing special education services to Student or were involved in decisions regarding Student's educational program beyond their mere oversight roles.

Issue One alleges that the respondents failed to comprehensively assess Student in all areas of suspected disability. The complaint alleges Student enrolled in iLead Hybrid a charter school home program, in January 2019. It asserts an IEP team meeting was held on April 11, 2019 and Student was found not eligible for special education services. The complaint asserts the decision was based on a record review by, "individuals employed by Respondent Charter and its affiliated agencies." The complaint contends that ILead Hybrid approved independent psychoeducational and speech and language assessments, which were reviewed at an IEP team meeting on January 14, 2021.

Issue One does not allege specific factual allegations regarding how either Acton-Agua Dulce or El Dorado SELPA were involved in decisions regarding Student's eligibility for special education during the timeframe plead in the complaint. Issue One also does not allege how Acton-Agua Dulce and El Dorado SELPA were responsible for providing a special education program or related services to Student. Issues One contains insufficient facts to provide Acton-Agua Dulce and El Dorado SELPA notice to prepare a defense. Therefore, Student's Issue One is insufficiently plead as to Acton-Agua Dulce and El Dorado SELPA for failure to state sufficient facts.

Issue Two alleges that Student should have been found eligible for special education as a child with autism since April 2019 and is entitled an appropriate educational program and services. The complaint generally alleges that the respondents, "collectively and individually" failed to identify Student as eligible for

special education but does not contain specific allegations regarding how Acton-Agua Dulce and El Dorado SELPA failed to identify Student's needs and find him eligible for special education services, or how they were involved in any decisions regarding Student's educational program. Therefore, Student's Issue Two is insufficiently plead as to Acton-Agua Dulce and El Dorado SELPA for failure to state sufficient facts.

As to Issues 3 and 4, as Acton-Agua Dulce and El Dorado SELPA are not proper parties before OAH, these claims are also insufficiently pled.

If Student wishes to hold Acton-Agua Dulce and El Dorado SELPA responsible for the denial of FAPE in Issues 1 and 2, Student needs to allege that they were actually involved in the actions that lead to the denial of FAPE, and not a respondeat superior legal argument.

OAH will not rule on Acton-Agua Dulce and El Dorado SELPA's motions to be dismissed as parties to this proceeding as the motions are moot in light of this order. The legal standards and timelines for ruling on notices of insufficiency and motions to dismiss are different, and any future pleadings must be filed separately. This order is without prejudice to the parties' right to file motions to dismiss separately from any notice of insufficiency, if appropriate, following the filing by Student of an amended complaint.

ORDER

1. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D) as to Acton-Agua Dulce and El Dorado SELPA.

2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II). The amended complaint shall comply with the requirements of 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.
3. If Student fails to file a timely amended complaint, the complaint will be dismissed as to Acton-Agua Dulce and El Dorado SELPA.
4. Matter shall proceed as scheduled as to iLead Hybrid.
5. Acton-Agua Dulce and El Dorado SELPA's motions to be dismissed as parties that were included with their notice of insufficiencies are moot in light of this order.

IT IS SO ORDERED.
Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings