BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

NEVADA COUNTY SPECIAL EDUCATION LOCAL PLAN AREA, NEVADA JOINT UNION HIGH SCHOOL DISTRICT, AND NEVADA UNION HIGH SCHOOL.

OAH CASE NUMBER 2020060189

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT AS TO NEVADA COUNTY SELPA

JUNE 11, 2020

On May 28, 2020, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Nevada County Special Education Local Plan Area or SELPA, Nevada Joint Union High School District, and Nevada Union High School. On June 11, 2020, Nevada County SELPA 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).

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).)

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.)

DISCUSSION

Nevada County SELPA timely filed its notice of insufficiency within 15 days after it received Student's complaint. SELPA asserts the complaint is insufficient because it fails to specifically identify any allegation against it and fails to provide sufficient facts as to how it denied Student a free appropriate public education or FAPE. This Order only addresses the sufficiency of the complaint as to Nevada County SELPA.

Student's complaint generally alleges that "Nevada Union" and "District" and "School" denied Student the right to be assessed for special education and the right to receive copies of her education records. Student's statement of issues identifies numerous issues for hearing based on "District's" alleged actions or inactions which denied Student a FAPE. The only reference to Nevada County SELPA is that Student resides within its boundaries and that respondents responsible for SELPA's breach of FAPE should be provided 15 hours of training as a proposed resolution.

Student's complaint fails to allege any actions or inactions by Nevada County SELPA that resulted in a denial of FAPE. A complaint must contain enough facts to place each named respondent on notice as to the specific allegations brought against it. Student's complaint is devoid of any factual allegations as to SELPA. Student fails to

identify any allegations against Nevada County SELPA that would put it on notice of any claims against it and allow it to prepare a response and prepare for a resolution session and for hearing. Accordingly, Student's complaint is insufficiently pled as to Nevada County SELPA as it fails to provide SELPA with the required problem description and the facts relating to the problem.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS: A parent without an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled as to Nevada County SELPA 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. The filing of an amended complaint will restart the applicable timelines for a due process hearing.
4. If Student fails to file a timely amended complaint, Nevada County SELPA will be dismissed as a party, and the hearing will proceed as to any remaining respondents.

5. All dates remain as previously set in this matter.

IT IS SO ORDERED.



Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings