

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT AND NORTH REGION
SELPA.

OAH CASE NO. 2012100999

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT AS TO SELPA

On October 24, 2012 Student filed a due process hearing request¹ (complaint) naming the Berkeley Unified School District (District) and North Region SELPA (NRSELPA).

On November 7, 2012, NRSELPA filed a notice of insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² 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 (FAPE) 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.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ 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.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

However, special education due process hearing procedures extend only 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 [SELPA], . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.) Thus, although a SELPA may fit the definition of “public agency” set forth in the IDEA, to be a proper party for a due process hearing the SELPA must also be involved in making decisions regarding a particular student.

Determination of whether NRSELPA is a “public agency involved in any decisions regarding” Student in this case requires a review of California statutes that define the role of SELPA’s. Education Code sections 56195, 56195.1, and title 2, California Code of Regulations, section 60010, set forth the role of SELPA’s. Specifically, a SELPA, meaning the service area covered by a special education local plan, shall administer the allocation of funds and local plans submitted under Education Code section 56205. Nothing in Education Code sections 56195 and 56195.1 renders a SELPA individually responsible to provide a FAPE to, or make education decisions about, a particular student. The duty to administer the

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

allocation of funds and local plans is not a duty to provide FAPE to individual students or a duty to make educational decisions for individual students.

DISCUSSION

Student's complaint alleges 19 claims in the complaint, six of which are against NRSELPA, or District and NRSELPA. The claims against NRSELPA are insufficiently pleaded, as discussed below.

Student alleges that his fifth grade IEP provides for him to be educated in a self-contained special day class (SDC) for student with autism; however, due to District having no middle school SDC, District inappropriately offered Student full inclusion in a general education classroom for sixth grade in Student's individualized education program (IEP) of May 18, 2012. As to NRSELPA, Student's complaint alleges that: (i) District consulted with NRSELPA on appropriate placements for Student, (ii) NRSELPA is "responsible for the oversight of local educational agencies," and (iii) the NRSELPA forms used by District did not require full compliance with notice laws. Student's claims against NRSELPA are: (Issue 6) District and NRSELPA failed to have an IEP in place at the beginning of the current school year, (Issue 9) District and NRSELPA failed to ensure that Student was offered a "continuum of placements," (Issue 13) NRSELPA failed to provide SDC's for students with autism for District and the County, (Issue 15) NRSELPA's forms did not ensure that District complied with the IDEA's prior written notice requirements, (Issue 18) District and NRSELPA failed to investigate and offer Student programs in other school districts or nonpublic schools when District did not have an appropriate program, and (Issue 19) District's and NRSELPA's conduct constituted discrimination against Student on the basis of his disability.

NRSELPA contends that Student's complaint is insufficient against it, as it fails to allege that NRSELPA was responsible for providing services to Student or for making educational decisions about Student, for purposes of bringing NRSELPA within the definition of a "public agency" against whom a due process hearing may be sought by Student.

Student's complaint raises six issues against NRSELPA, but none of the issues are supported by facts demonstrating that NRSELPA had an individual duty to Student. As set forth above, Education Code sections 56195 and 56195.1 do not impose a duty upon a SELPA to be individually responsible to provide a FAPE, or make education decisions about Student. Provision of blank forms to member school districts, including District, for use in special education matters does not result in NRSELPA thereby supervising District and participating in District's educational decisions, and such a reading of Student's complaint would result in an unreasonable expansion of NRSELPA's statutory role.

In sum, the complaint fails to allege violations of the IDEA or corresponding state law against NRSELPA. Therefore Student's complaint is insufficient as to NRSELPA.

ORDER

1. Student's complaint is insufficiently pled as to NRSELPA 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).⁸
3. The amended complaint shall comply with the requirements of Title 20 United States Code 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 NRSELPA.
5. All dates previously set in this are vacated as to NRSELPA, but remain on calendar as to District.

Dated: November 9, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

⁸ The filing of an amended complaint will restart the applicable timelines for a due process hearing as to all respondents.