BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT AND ASPIRE RIVER OAKS CHARTER.

OAH CASE NUMBER 2023060812

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

JUNE 30, 2023

On June 20, 2023, Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Lincoln Unified School District and Aspire River Oaks Charter. On June 30, 2023, Lincoln filed a notice of insufficiency as to the complaint. OAH received no response from Student.

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.)

Here Student's complaint alleges 13 claims, some of which are sufficient and some which are insufficient. The Issues are discussed below.

In Issue 1, Student alleges that Lincoln denied him a free appropriate public education, referred to as a FAPE during the 2021-2022 school year. In various subdivisions, Student further delineates the claims alleged. In Issue (a), Student alleges that Lincoln denied him a FAPE by failing to offer appropriate speech and language services. The allegations which follow explain that Student contends he required more than the 1250 annual minutes of speech and language offered in the September 10, 2021 individualized education program, called an IEP. Student's complaint identifies the issues and adequate facts about the problem to permit Lincoln to respond and participate in a resolution session and mediation.

In Issue 1(b), Student alleges that Lincoln denied him a FAPE by failing to offer appropriate accommodations. The allegations which follow explain that Student required accommodations in his September 10, 2021 IEP to address needs with articulation and phonology to communicate effectively with peers and staff in his preschool classroom. Though Student does not specify the specific accommodations requested, the complaint identifies the issues and adequate facts about the problem to permit Lincoln to respond and participate in a resolution session and mediation.

In Issue 1(c), Student alleges that Lincoln denied him a FAPE by failing to offer appropriate annual goals in the September 10, 2021 IEP. Student then alleges that three specifically identified communication goals were inappropriate because Student did not meet all three of them, they offered de minimus progress, they did not change from prior goals, or at most changed only slightly. This sub-issue, on its face, relates to three communication goals from the September 10, 2021 IEP, which demonstrates that the

complaint identifies the issues and adequate facts about the problem to permit Lincoln to respond and participate in a resolution session and mediation.

Issue 1(d) alleges that Lincoln failed to offer extended school year for the 2021-2022 school year. The allegations which follow demonstrate that Student contends he required extended school year services to address deficits in communication. The complaint identifies the issues and adequate facts about the problem to permit Lincoln to respond and participate in a resolution session and mediation.

Issue 1(e) alleges Lincoln failed to offer parent training in speech and language as part of the September 10, 2021 IEP. The allegations which follow reiterate Student's speech and language difficulties and conclude that Student did not meet his speech and language goals, had intelligibility problems at home and school, and that Lincoln should have considered Parent's problem with Student's speech and language at home. The complaint identifies the issues and adequate facts about the problem to permit Lincoln to respond and participate in a resolution session and mediation.

Issue 1(f) alleges Lincoln failed to honor Parent's request at the September 10, 2021 IEP team meeting, resulting in a predetermined IEP. The allegations which follow explain that Parent had no time to study the speech and language report signed by the speech language pathologist on September 9, 2021, as it was completed the day before the IEP team meeting. Accordingly, Student contends, Parent could not have provided informed consent to the IEP document. Student further contends that resulted in a procedural violation denying meaningful participation in the IEP team meeting, which in turn rendered the IEP pre-determined.

Student's Issue 1(f) alleges a denial of FAPE by failing to honor Parent's request at the September 10, 2021 IEP meeting, thereby offering a predetermined IEP. Issue 1(f)

does not put Lincoln on notice of the issue nor provide adequate facts about the problem to permit Lincoln to respond and participate in a resolution session or mediation.

Student states Issue 1(f) insufficiently for several reasons. First, Student fails identify the Parent request that Lincoln failed to honor. Second, as is common in other places in Student's complaint, Student sets forth a plethora of legal summaries not supporting any contentions. The several pages of legal summary between the Issue statement and factual allegations only cloud what issue Lincoln should focus on. Second, the facts alleged suggest, but do not support, claims in failure to consider an unidentified Parent request, predetermination of an IEP offer, denial of meaningful participation in the development of an IEP, and a lack of informed consent when Parent signed the IEP. Student does not sufficiently allege which of these claims, if any, he is trying to state in Issue 1(f). Accordingly, Student's Issue 1(f) fails for insufficiency.

Student's Issue 2 alleges various FAPE denials against Aspire River Oak Charter School during the 2022-2023 school year. Issue 2(a) alleges Aspire denied Student a FAPE by no offering more speech and language services in the August 30, 2022 IEP. The complaint identifies the issues and adequate facts about the problem to permit Aspire to respond and participate in a resolution session and mediation.

Issue 2(b) alleges that Aspire failed to offer necessary accommodations in the August 30, 2022 IEP. The allegations which follow explain that Student's difficulty with speech and how that impacts the ability of peers and teachers to understand Student, which, in turn, can effect Student's participation. Student alleges the IEP provides no accommodations addressing his communication needs in the preschool classroom. The complaint identifies the issues and adequate facts about the problem to permit Aspire to respond and participate in a resolution session and mediation.

Issue 2(c) alleges that Aspire failed to offer a one-to-one aide at the August 30, 2022 IEP. On its face, the issue statement provides Aspire with the ability to respond and participate in a resolution session and mediation.

Issue 2(d) alleges that Aspire failed to address Student's regression at the August 30, 2022 IEP. Regression may indicate a lack of anticipated progress, but regression alone does not support a denial of FAPE. Student must allege a denial of FAPE, e.g., what Aspire did or did not offer, that resulted in Student not making anticipated progress. The allegations which follow this issue do nothing to explain what type of FAPE denial Student alleges. Issue 2(d) is insufficiently pled.

Issue 2(e) alleges Aspire failed to offer extended school year services. The allegations which follow explain that Student needed more speech and language services and insinuates that there was not enough time during the regular school year to provide the hours Student needed. Student then concludes that Aspire should have offered extended school year services in the August 30, 2022 IEP. The complaint identifies the issues and adequate facts about the problem to permit Aspire to respond and participate in a resolution session and mediation.

Issue 2(f) alleges Aspire failed to offer Parent training in speech and language at the August 30, 2022 IEP team meeting. The allegations which follow show that Student seeks Parent training to address communication difficulties which cross over from school to home. The complaint identifies the issues and adequate facts about the problem to permit Aspire to respond and participate in a resolution session and mediation.

Issue 2(g) alleges Aspire failed to honor a Parent request at the August 30, 2022 IEP team meeting, thereby offering a predetermined IEP. The allegations which follow

indicate that Parent asked for more speech and language services and that Aspire ignored the request. Therefore, Student sufficiently put Aspire on notice of a claim for predetermination based upon the alleged failure to honor Parent's request for more speech and language. If Student attempted to allege a different claim, it has not been sufficiently alleged. Student's Issue 2(g) states adequate facts about the problem to permit Aspire to respond and participate in a resolution session and mediation. Student's statement of Issue 2(g) is sufficient.

Based upon the foregoing, OAH orders as follows:

1. Issues 1(a), (b), (c), (d), and (e) and Issues 2(a), (b), (c), (e), (f), and (g) are sufficiently pled to put Lincoln and Aspire on notice as to the basis of Student's claims under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issues 1(f) and 2(d) of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issues 1(a), (b), (c), (d), and (e) and Issues 2(a), (b), (c), (e), (f), and (g) in Student's complaint.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings