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 SCHOOL.

OAH CASE NUMBER 2023060798

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

JULY 5, 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 12 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 alleges several factual contentions supporting the alleged need for an increase in speech and language services. Student's complaint identifies Issue 1(a) 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 his limited intelligibility, which hinders his ability to communicate effectively with peers and staff in the preschool classroom setting. Though Student does not identify specific accommodations requested, the complaint identifies Issue 1(b) 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, and they could not be achieved in the general education classroom. 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. 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 factual allegations. 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 not offering more than the 150 minutes of monthly 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 Student's difficulty with speech and how that impacts the ability of peers and teachers to understand Student, which, in turn, can affect 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) states that Aspire failed to offer appropriate goals in the August 30, 2022 IEP. The allegations which follow indicate that Aspire offered two intelligibility goals, which were inadequate for several reasons. First, were no present levels of performance, which meant there were no base lines, which, Student alleges, means the goals were not measurable. Second, Student alleges the goals were inadequate to meet his needs because they offered de minimus progress over prior goals and were entirely lacking in ambition. The complaint identifies Issue 2(c) and adequate facts about the problem to permit Aspire to respond and participate in a resolution session and mediation.

Issue 2(d) alleges that Aspire failed to offer extended school year services. The allegations which follow explain several areas of speech and language in which Student required services and Parent's request for additional resources to help with Student's communication issues. 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(e) 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 did not meet all his speech goals. The complaint also alleges 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(f)(i) 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.

Issue 2(f)(ii) alleges Aspire failed to obtain informed consent to the August 30, 2022 IEP because there are no present levels of academic achievement and functional performance. If Student attempted to allege a different claim, it has not been sufficiently alleged. Student's Issue 2(f) states adequate facts about the problem, namely a lack of present levels, to permit Aspire to respond and participate in a resolution session and mediation. Student's statement of Issue 2(f)(ii) 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), (d), (e), and (f), 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) of Student's complaint is 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), (d), (e), and (f), in Student's complaint.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings