BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. INNOVATIVE EDUCATION MANAGEMENT, INC. SKY MOUNTAIN CHARTER SCHOOL, and LUCERNE VALLEY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018110130 ORDER OF DETERMINATION OF SUFFICIENCY OF AMENDED DUE PROCESS COMPLAINT

On December 21, 2018, 2018, Student filed an amended due process hearing request[1] (amended complaint) with the Office of Administrative Hearings naming Innovative Education Management, Inc., Sky Mountain Charter School, and Lucerne Valley Unified School District. On January 4, 2018, Education Management and Sky Mountain filed a notice of insufficiency as to Student's amended complaint.[2] On January 8, 2018, Student filed an opposition to Education Management's and Sky Mountain's notice of insufficiency.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

[2] The law firm of Girard Edwards Stevens and Tucker, LLP filed a notice of representation on November 5, 2016 notifying Student and OAH that it represents Sky Mountain and Education Management. However, the notice of insufficiency is written as though this law firm represents Education Management and Lucerne Valley. On December 24, 2018, the law firm of Best Best and Krieger, LLP filed a notice of representation with OAH that states it is representing Lucerne Valley. Best Best and Krieger did not file a notice of insufficiency on behalf of Lucerne Valley. Accordingly, it is determined that the notice of insufficiency was filed by Girard and Edwards on behalf of Sky Mountain and Education Management. The sufficiency of the amended complaint is not determined in this Order as to Lucerne Valley.

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 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. (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, mediation, and a due process hearing. (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, 46,697-46,699.)

DISCUSSION

Student has alleged 13 issues in his amended complaint. Some of these issues are sufficiently plead as to Sky Mountain and Education Management. Some issues are insufficiently plead as to both parties. Some issues are insufficiently plead as to Education Management, but not Sky Mountain. One issue is found partially sufficient as to Education Management, and sufficiently plead as to Sky Mountain. Student's opposition to the notice of insufficiency has been reviewed. The Individuals with Disabilities Education Act does not anticipate or discuss any response to a notice of insufficiency. The determination of the sufficiency of a complaint is based on what is in the complaint itself. There is no provision that permits the petitioner to supplement the complaint with extraneous information when his complaint is under review to determine whether it is sufficiently pled.

Following a statement of the 13 issues, Student states his proposed resolutions for each issue, followed by a section titled "Description of the Problem." This is a relatively chronological narrative that describes Student's disability as a child with autism, and then details his dealings with the parties. Sky Mountain is a homeschool-independent study charter school, managed by Education Management. Lucerne Valley chartered Sky Mountain. According to Student, in his amended complaint, Sky Mountain has "vendors" which it funds to provide classes and services, such as speech and language therapy, for its students.

Issue 1

Student states Issue 1 in the amended complaint as follows, "Did Defendant's [*sic*] deny a Free Appropriate Public Education ("FAPE"), for Student's unique circumstances during Student's Kindergarten grade 2017-2018 school year and ESY [extended school year] 2018?" In the narrative description of the problem, Student states that he had an individualized education program from an unnamed school district which called for him to receive 1,000 minutes weekly of specialized academic instruction in a special day class, 300 minutes weekly of applied behavior analysis, and 60 minutes weekly of speech and language therapy. When he enrolled at Sky Mountain, he was offered far fewer services, according to Student, which were also offered at a 30-day IEP team meeting in September 2017. These services were 60 minutes weekly of specialized academic instruction, and 45 minutes of speech and language services. Student asserts that there were no IEP goals. According to Student, Parent signed an IEP with these services and no goals, on December 15, 2017. The narrative continues with a description of Parent's various disputes with Sky Mountain concerning the providers and locations where services were to be given. By referring to the parties as "Defendant[]s" Student has shown that he is making this claim against all parties. Student provides sufficient facts in his amended complaint that will enable Sky Mountain and Education Management to prepare for a resolution session. mediation, and due process hearing, and thus it is found that Issue 1 is sufficiently plead.

Issue 2

In his amended complaint Student states Issue 2 as follows, "Did SMCSI [Sky Mountain and Education Management] deny a Free and Appropriate Public Education ("FAPE"), for Student's unique circumstances, during Student's 1st grade 2018-present school year?" In the narrative section of the amended complaint, Student describes events that preceded the 2018-2019 school year, including an IEP team meeting and offer made in April 2018, following triennial assessments of Student. He also describes alleged incidents which occurred during the 2018-2019 school year. Student provides sufficient facts in his amended complaint that will enable Sky Mountain and Education Management to prepare for mediation, a resolution session, and a due process hearing, and thus it is found that Issue 2 is sufficiently plead.

Issue 3

In his amended complaint Student states Issue 3 as follows, "Does Sky Mountain owe Student an IEE [independent education assessment] in all areas requested?" Student alleges, at page 18 of the amended complaint, that he requested an independent education assessment on October 14, 2018. However, he does not state how he made the request, i.e., whether it was verbal or written, etc.; the name or position of the person or persons to whom he transmitted the request; the areas in which he requested independent educational assessments; and which assessments he disagreed with. There are no allegations made in regards to this issue as to Education Management. Student does not provide sufficient facts in his amended complaint that will enable Sky Mountain and Education Management to prepare for a resolution session, mediation, and due process hearing, and thus it is found that Issue 3 is insufficiently plead as to both parties.

Issue 4

In his amended complaint Student states Issue 4 as follows, "Is Sky Mountain using predetermined offers and services to Student (and Students), and as a result denying needed services--instead of a detailed individual educational plan as the law requires?" At page 12, and pages 15 through 16, Student describes IEP team meetings in September 2017, December 2017, and April 2018; and claims that Sky Mountain predetermined its IEP offers. Student describes the offers made at these IEP team meetings. However, facts were alleged only against Sky Mountain, and there are no allegations against Education Management. Student does not provide sufficient facts in his amended complaint that will enable Education Management to prepare for a resolution session, mediation, and due process hearing, and thus it is found that Issue 4 is insufficiently plead as to Education Management. Student provides sufficient facts in his amended complaint that will enable Sky Mountain to prepare for a resolution session, mediation, and due process hearing, and thus it is found that Issue 4 is sufficiently plead as to Sky Mountain.

Issue 5

In his amended complaint Student states Issue 5 as follows, "Is Sky Mountain expecting parents to provide special education transportation, providing mileage in lieu of providing actual transportation, and/or refusing transportation--despite transportation being a related service--a Denial of FAPE?" At page 17 of the amended complaint, Student claims Parent has provided all transportation for Student to and from providers of service, and that Sky Mountain has not offered to reimburse Parent for the transportation. Student gives time periods for some allegations, and therefore it is presumed that this allegation pertains to both school years at issue. However, Student makes allegations only as to Sky Mountain, and there are no allegations against Education Management. Student does not provide sufficient facts in his amended complaint that will enable Education Management to prepare for a resolution session, mediation, and due process hearing, and thus it is found that Issue 5 is insufficiently plead as to Education Management. Student provides sufficient facts in his

amended complaint that will enable Sky Mountain to prepare for a resolution session, mediation, and due process hearing, and thus it is found that Issue 5 is sufficiently plead as to Sky Mountain.

Issue 6

In his amended complaint Student states Issue 6 as follows, "Is Sky Mountain refusing 'in home' services for Student, regardless of Student's individual needs--a Denial of FAPE and/or Discrimination?" At page 15 of the amended complaint Student alleges that the provider of 60 minutes of specialized academic instruction offered to provide the services at Student's home rather than at the library, as called for in the IEP, but Sky Mountain refused to allow this. However, there is no date given as to when Parent and teacher discussed this, how and when this suggestion was presented to Sky Mountain, and the person or persons to whom the suggestion was presented. Student does not provide the date Sky Mountain refused to allow this, the name of the person or persons who communicated the refusal, and the manner in which the refusal was communicated (in person, in writing, etc.). Education Management is not named in Issue 6, nor does Student assert any allegations pertaining to it. Student does not provide sufficient facts in his amended complaint that will enable Sky Mountain to prepare for a resolution session, mediation, and due process hearing. No specific claims are made against Education Management. Thus, it is found that Issue 6 is insufficiently plead as to both parties.

Issue 7

In his amended complaint, Student states Issue 7 as follows, "Did Sky Mountain fail to properly provide [Parent] all her son's educational records within 5 days--resulting in a Denial of FAPE?" At pages 16 and 17 in the amended complaint, Student claims Parent made a records request on October 14, 2018, and did not receive the records until after the original complaint in this matter was filed. There is also a claim that Student's education advocate spoke to Sky Mountain's special education director about this. Education Management is not named in Issue 7, and Student does not assert facts stating any claims against Education Management for failing to provide records. Thus he does not provide sufficient facts in his amended complaint that will enable Education Management to prepare for a resolution session, mediation, and due process hearing. Thus, it is found that Issue 7 is insufficiently plead as to Education Management. Student does provide sufficient facts in his amended complaint to enable Sky Mountain to prepare for a resolution session, mediation, and due process hearing, and thus it is found that Issue 7 is sufficiently plead as to Sky Mountain.

Issue 8

In his amended complaint, Student states Issue 8 as follows, "Did Sky Mountain fail to follow the procedures and law for a Manifestation Determination, including but not limited to failing to consider all relevant information regarding Student, resulting in a Denial of FAPE and attempted illegal expulsion (assuming Student is now in Stay Put)?" As

written, Issue 8 appears to state grounds for an expedited hearing., However, the Order Following Prehearing Conference of December 21, 2018, conducted by Administrative Law Judge Kara Hatfield, states that the parties agreed that Student continues to be enrolled at Sky View, and an expedited hearing is not necessary, or desired. Therefore, Issue 8 in the amended complaint was withdrawn at the PHC.

Issue 9

In his amended complaint Student states Issue 9 as follows, "(all years) Did Sky Mountain fail to provide progress reports with actual progress data as required, resulting in a Denial of FAPE?" At page 15 of the amended complaint, Student asserts he never received progress reports. At page 16, Student states that progress reports were not received for either of the school years at issue. Student makes no claims of responsibility of Education Management for providing progress reports, and therefore does not provide sufficient facts in his amended complaint that will enable Education Management to prepare for a resolution session, mediation and due process hearing as to this issue. Thus it is found that Issue 9 is insufficiently plead as to Education Management. Student does provide sufficient facts in his amended complaint to enable Sky Mountain to prepare for a resolution session, mediation, and due process hearing, however, and thus it is found that Issue 9 is sufficiently plead as to Sky Mountain.

Issue 10

In his amended complaint Student states issue 10 as follows, "(all years) Did Sky Mountain fail to provide a PWN [prior written notice] or a timely PWN for proposed changes, including a "Manifestation Determination", refusing in home services, changing service provider locations, and finally attempting to 'un-enroll' Student, resulting in a Denial of FAPE?" At page 16, Student asserts there were multiple recommendations in the triennial assessments that were discussed at the April 2018 IEP team meeting, as well as Parent requests. Student further alleges Sky Mountain refused to put the recommendations and requests for services and changes in the IEP. Student contends no prior written notice was provided for these refusals. At the bottom of page 16 and top of page 17 of the amended complaint, Student asserts he had received extended school year services at his previous school district, and when Sky Mountain failed to provide these services it failed to provide prior written notice. At page 19, Student asserts Sky Mountain and Education Management attempted to have OAH convene a mediation only, and contends that no prior written notice was provided to inform Student what the mediation was for. At the bottom of page 19 and top of page 20, Student asserts Parent and his advocate were not provided with prior written notice for a "manifestation determination" in the fall of 2018. On pages 20 and 21, Student asserts requests for prior written notice related to a "manifestation determination" meeting held on November 1, 2018, were ignored. On Page 21, Student asserts Sky Mountain refused to provide Student with applied behavior analysis services throughout the time period at issue, and failed to provide prior written notice for this refusal. Student alleges facts against Education Management in the amended complaint only as to the attempted mediation in September 2018. Therefore, it is found that Issue 10 is sufficiently plead as to Education

management, but only as to the sole question of whether prior written notice was provided regarding the attempted "mediation only." Student provides sufficient facts in his amended complaint that will enable Sky Mountain to prepare for a resolution session, mediation, and due process hearing as to all allegations contained in issue 10, and thus it is found that Issue 10 is sufficiently plead as to Sky Mountain.

Issue 11

In his amended complaint Student states Issue 11 as follows, "(all years) Did Sky Mountain limit parent participation and retaliate against Parent, for Parent refusing to accept their offer of FAPE, and/or Parent refusing services Parent feels do not provide meaningful educational benefit in light of Student's circumstances, and/or Parent believes are not appropriate services and/or providers for Student?" Student, at the bottom of page 20 of his amended complaint, states Parent was denied participation, but it is impossible to determine which specific instances in the amended complaint Student asserts apply to this allegation. Additionally, at page 21 of the amended complaint Student alleges Sky Mountain routinely sends students back to their home school districts for services. Student then states, "Clearly – retaliation, intimidation, and law breaking are a pattern for Sky Mountain." Again, the narrative is unclear as to which incidents Student alleges constitute retaliation by Sky Mountain against Parent. No claims were stated as to Education Management in Issue 11. Student does not provide sufficient facts in his amended complaint that will enable Sky Mountain or Education Management to prepare for a resolution session, mediation, and due process hearing, and thus it is found that Issue 11 is insufficiently plead.

Issue 12

In his amended complaint Student states Issue 12 as follows, "(All Years) Are Sky Mountain's actions to against [sic] Student for 'needing too many services' a Denial of FAPE, and Discriminatory against disabled Students?" In the amended complaint, at pages 14, 15 and 21, Student claims Parent was told by different people at different times that Sky Mountain has a reputation for sending students back to their home schools if they "need too many services." However, Student does not provide dates and facts that support the claim that he was denied a FAPE because he needed "too many services" in the amended complaint. No claims are alleged against Education Management in Issue 12. Student does not provide sufficient facts in his amended complaint that will enable Sky Mountain or Education Management to prepare for a resolution session, mediation, and due process hearing, and thus it is found that Issue 12 is insufficiently plead.

Issue 13

Student, in his amended complaint, states Issue 13 as follows, "(2018) Did Sky Mountain participate in, encourage, or condone abuse of Student, and then fail to report the abuse as Mandated Reporters?" In the amended complaint, at pages 14 and 15, Student relates an alleged incident with a speech and language therapist Sky Mountain had referred him to, that he claims was abuse. No claims were alleged against Education Management in

Issue 13. The amended complaint is insufficiently pled as to Education Management since it does not contain sufficient facts that will enable Education Management to prepare for a resolution session, mediation, and due process hearing, Student provides sufficient facts in his amended complaint that will enable Sky Mountain to prepare for a resolution session, mediation, and due process hearing, and thus it is found that Issue 13 is sufficiently plead as to Sky Mountain. However, it should be noted that there may be a question as to whether OAH has jurisdiction over this claim, and nothing precludes Sky Mountain from pursuing a different vehicle to exclude this issue from adjudication.

A Second Amended Complaint Will be Allowed

Student will be permitted to file a second amended complaint. The OAH form (which parties are not required to use) provides parties with information about how to state claims that can survive a notice of insufficiency. The OAH form requires a party to state a problem (issue), provide facts related to that problem, and then provide a proposed resolution to the problem. Then the party proceeds to state the second problem, facts related to that problem, and a proposed resolution. The OAH complaint form instructions state, "Federal and state law require you describe with specificity the nature of the problem(s)/complaint(s). Simply describing a problem as 'Student denied a FAPE school year 2005-2006' is insufficient. Include facts, dates, references to specific IEP provisions, etc. Lack of specificity in identifying problem(s)/complaint(s) may result in the dismissal of this Due Process Hearing Request."

A parent who is not represented by 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. Issues 1, 2, 4, 5, 7, 9, 10, and 13 of Student's amended complaint are sufficiently plead as to Sky Mountain under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Issues 3, 6, 11, and 12 of Student's amended complaint are insufficiently plead as to Sky Mountain under title 20 United States Code section 1415(c)(2)(D).

3. Issues 1, and 2 in the amended complaint sufficiently plead as to Education Management under title 20 U.S.C. section 1415(b)(7)(A)(ii). Issue 10 is sufficiently plead in the amended complaint as to Education Management, but only as it pertains to the September 2018 mediation request.

4. Issues 3, 4, 5, 6, 7, 9, 11, 12, and 13 are insufficiently plead in the amended complaint as to Education Management under title 20 United States Code section 1415(c)(2)(D).

5. Issue 8 was withdrawn at the PHC on December 21, 2018.

6. Student shall be permitted to file a second amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).[3]

7. The second 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.

8. If Student fails to file a timely amended complaint, the hearing shall proceed only on those Issues in Student's amended complaint that are found to be sufficiently plead in this Order.

9. The parties shall be prepared to discuss and further define the issues during the telephonic PHC which is scheduled for 3:00 p.m. on February 1, 2019.

IT IS SO ORDERED

DATE: January 9, 2019

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

[3] The filing of an amended complaint will restart the applicable timelines for a due process hearing.