BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LINCOLN UNIFIED SCHOOL DISTRICT, STOCKTON UNIFIED SCHOOL DISTRICT, AND SAN JOAQUIN COUNTY OFFICE OF EDUCATION.	OAH Case No. 2017070188 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AS TO LINCOLN UNIFIED SCHOOL DISTRICT

On July 5, 2017, Parent on Student's behalf filed a Due Process Hearing Request[1] (complaint) with the Office of Administrative Hearings naming Lincoln Unified School District (Lincoln), Stockton Unified School District (Stockton), and San Joaquin County Office of Education. OAH determined that the complaint raised issues requiring expedited and non-expedited hearings and set the case for dual hearings. The expedited hearing is scheduled for hearing on August 1, 2017.

On July 14, 2017, Lincoln filed a Motion to Dismiss and, in the alternative, a timely Notice of Insufficiency as to Issues 5 and 6 of Student's complaint. This Order does *not* address Lincoln's motion to dismiss, which District must file as a separate motion. This Order only addresses the sufficiency of the complaint as to Lincoln, on all issues.

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 not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States

[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).

Code section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Indeed, there is insufficient time to complete the NOI process in expedited hearings.

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 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 Individuals with Disabilities Education Act 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

The complaint alleges Student, who had an individualized education program, resided within Stockton's boundaries. He attended Lincoln High School during the 2016-2017 school year on an interdistrict transfer permit. Lincoln declined to renew his interdistrict transfer permit for the 2017-2018 school year because it suspended him in February 2017 for disciplinary reasons. Student alleges throughout his statement of issues that Lincoln failed to follow proper procedures before suspending him from school, and by failing to properly enforce disciplinary procedures. As a proposed remedy to all issues, Student seeks an Order allowing him to finish high school at Lincoln.

Issues 1 and 2 allege that Student's suspension by Lincoln in February 2017 may have been related to his disability and Lincoln did not follow proper procedures before suspending him, resulting in a change of placement. Similarly, Issue 5 alleges the lack of proper protocol used to discipline Student, and lack of assistance in the area of behavior support to

prevent further disciplinary incidents, resulted in disciplinary incidents at school. Those issues require an expedited hearing and are not subject to an analysis of sufficiency.

Issue 3 alleges Stockton, as the home school district, failed to allow Parent to enroll Student within Stockton during the summer, leaving him without a placement. Issue 3 alleges no claims against Lincoln, and its sufficiency is not addressed by this Order.

Issue 4 alleges that, because of Student's suspension from Lincoln, neither Lincoln nor Stockton offered Student an appropriate placement for the 2017-2018 school year. When read in conjunction with the other facts in the complaint, Issue 4 can be interpreted to raise a claim that Lincoln denied Student a FAPE by inappropriately suspending him, resulting in an inappropriate change of placement for the 2017-2018 school year. Issue 4 is sufficient to put Lincoln on notice of the FAPE issue to enable it to respond to the complaint and participate in a resolution session and mediation on the non-expedited claims.

Issue 6 alleges Lincoln failed to use appropriate protocol in enforcing discipline of Student. Lincoln also allegedly failed to provide assistance in transitioning Student back to Stockton. The first part of Issue 6 relates to Issues 1 and 2. The second part relates to issue 4.

Issue 4 and Issue 6 as to Student's assertion that Lincoln denied him a FAPE by failing to offer an appropriate placement for the 2017-2018 school year are sufficient because they state sufficient facts to put Lincoln on notice of the problem and to participate in a resolution session and mediation on the unexpedited issues.

For the reasons discussed above, the sufficiency of the claims requiring an expedited hearing in Issues 1, 2, 5, and 6 as they relate to Lincoln's procedural compliance with 20 United States Code section 1415(k) is not addressed by this Order.

ORDER

1. Issues 1, 2, 5, and a portion of Issue 6 relating to failure to follow proper disciplinary procedures are expedited issues under title 20 United States Code section 1415(k)(3) and therefore shall proceed to hearing on August 1, 2017, as scheduled.

2. The complaint is sufficient as to Issue 4, and the claim stated in Issue 6 relating to Student's placement for the 2017-2018 school year, under title 20 United States Code section 1415(b)(7)(A)(ii).

3. All mediation, prehearing conference, and hearing dates in the unexpedited matter are confirmed.

DATE: July 17, 2017

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings