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 DETERMINING FIRST AMENDED DUE PROCESS COMPLAINT PARTIALLY INSUFFICIENT

JULY 25, 2023

On June 20, 2023, Parents, on behalf of Student, filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, called OAH, naming Lincoln Unified School District and Aspire River Oaks Charter as respondents. Following Lincoln's timely notice of insufficiency, OAH issued an order on June 30, 2023, determining issues 1(f) and 2(d) were insufficient. Student was given the opportunity to file an amended complaint or to have the complaint proceed only on the issues found to be sufficiently pled.

Student's amended complaint was filed on July 17, 2023. Lincoln filed a second Notice of Insufficiency and requested sanctions for Student's failure to correct the deficiencies, and for failure to file the amended complaint within the 14 days ordered in the Determination of Insufficiency, or alternatively for failing to file the amended complaint with a motion to amend.

SECOND DETERMINATION OF PARTIAL INSUFFICIENCY

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.] 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 46541, 46699.)

Student's first amended complaint alleges two issues in the complaint, each of which has several subparts. Some of the allegations are sufficient and some are insufficient. The issues are discussed below.

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. These claims were previously determined to be sufficient as stated in the June 30, 2023 Order Determining Insufficiency, and were not changed from Student's original complaint.

Student's First Amended Complaint continues to fail to allege sufficient claims in issues 1(f) and 2(d). These slightly altered claims did not correct the previously identified insufficiencies and, thus, remain insufficient.

Issue 1(f) in Student's First Amended Complaint, alleges, "Did District deny Student a FAPE by failing to honor Parent's request at the 9/10/2021 IEP meeting, thereby offering a pre-determined IEP. The June 30, 2023 order determining this issue insufficient noted the issue failed to identify the request Student alleges was made at the 9/10/2021 IEP meeting that was not honored.

Issue 1(f) as stated in the First Amended Complaint still fails to identify the request made at the 9/10/2021 IEP that Lincoln did not honor. As a result, the issue fails to put Lincoln on notice of the allegations against which it must defend and the

claim is insufficient. Student would be best served by a clear statement the facts that form the basis for each claim. Including several paragraphs of what appear to be extraneous and only partial statements of the law results in confusing and vague pleadings. A special education due process complaint requires a clear statement of the facts describing a violation of state or federal special education laws, accompanied by a proposed resolution to that problem know to the party at the time the complaint is filed. (20 U.S.C. § 1415 (c)(1)(; 34 C.F.R. § 300.508; Ed. Code § 56502, subd. (c).)

Similarly, Issue 2(d) of Student's First Amended Complaint failed to correct the insufficiency noted in the June 30, 2023 Determination of Insufficiency. Issue 2(d) alleges, "Did Charter deny Student's *(sic)* a FAPE by failing to address Student's Regression at the 8/30/2022 IEP?" This issue, as pled, continues to assert vague allegations that Student was "prone to regression" and that Aspire failed to address that. The allegation recites the summary of the IEP offer and discusses speech deficits. Issue 2(d) does not, however, state facts stated what Aspire did at the August 30, 2022 IEP that failed to address Student's "regression." Nor does the issue describe a violation of the IDEA or California special education laws due to Aspire's failure to address regression. Nor does the allegation even describe the regression Student asserts is not being addressed. This allegation fails to put Aspire on notice of the claim against it, and is insufficient.

Student's issues 1(f) and 2(d) fail to give respondents adequate notice of the claims asserted against them to allow respondents the ability to prepare for resolution session, mediation or hearing. Thus, these issues are insufficient.

SANCTIONS

In certain circumstances, a Special Education Division administrative law judge, known as an ALJ, is authorized to shift expenses from one party to another. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist. (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].)

An ALJ may, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"Actions or tactics" are defined as including, but not being limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (West Coast Development v. Reed (1992) 2 Cal.App.4th 693, 702.) However, the imposition of sanctions does require a showing that the actions were meritless or frivolous and that the action was pursued in bad faith. (Campbell v. Cal Gard Sur. Services, Inc. (1998) 62 Cal. App. 4th 563, 574, emphasis in the original.)

The California Court of Appeal discussed what constitutes bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay in the case of *Levy v. Blum* (2001) 92 Cal.App. 4th 625, 635. The court stated the action taken by the party or its attorney must be solely for the purpose of harassing an opposing party. Whether an action is frivolous is governed by an objective standard: any reasonable attorney would agree it is totally and completely without merit. There must also be a showing of an improper purpose, such as subjective bad faith on the part of the attorney or party to be sanctioned. (*Levy v. Blum*, *supra*, 92 Cal.App.4th at p. 635.)

In this case, Lincoln has failed to establish bad faith actions or tactics as it has failed to demonstrate that Student's failure to articulate sufficient pleadings in Issues 1(f) and 2(g) was intentional. Furthermore, Lincoln failed to establish any loss resulting from the insufficient First Amended Complaint or from the filing of the amended complaint one business day after the 14-day deadline ordered. While the late filing is not excused, and should have been accompanied by a motion to amend, Lincoln has failed to establish the late filing justifies an award of sanctions. No declaration or other evidence quantifying how Lincoln was harmed by the second insufficient complaint was included with Lincoln's Notice of Insufficiency. Therefore, Lincoln established neither bad faith, nor harm; and its request for sanctions is denied.

ORDER

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), as previously stated in OAH's June 30, 2023 Order Determining Insufficiency.
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. Any amended complaint filed shall be clearly titled "Student's Second Amended Due Process Complaint."
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 First Amended Complaint.
6. Lincoln Unified School District's request for sanctions is denied.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings