

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
  
PARENTS ON BEHALF OF STUDENT,

V.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090373

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE  
PROCESS COMPLAINT

SEPTEMBER 21, 2021

On September 13, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Lincoln Unified School District. On September 17, 2021, Lincoln Unified School District filed a Notice of Insufficiency as to the complaint.

APPLICABLE LAW

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 Fed.Reg. 46,540-46541, 46699.)

On September 28, 2017, the attorney general issued an opinion letter which considered whether the Individuals with Disabilities Education Act, the implementing regulations, and/or the California Education Code authorized a party to special education due process proceedings to be represented by a person that was not an active member of the California State Bar. The attorney general's opinion concluded that these laws did not authorize parties to a special education due process hearing to be represented by a person that is not an active member of the California State Bar in due process hearings. (100 Ops. Cal. Atty. Gen. 19 (2017).)

## DISCUSSION

Student's complaint lists two overarching issues, a failure to implement and a violation of section 504 of the Rehabilitation Act of 1973. The complaint lists six enumerated resolutions. Although the complaint fails to separately enumerate the issues for hearing, it appears that both claims are based upon the same factual assertions. Student alleges that beginning in mid-March 2020, Lincoln Unified School District denied Student a free appropriate public education, called FAPE, by failing to implement Student's November 5, 2019 and November 5, 2020 individualized education programs, called IEPs in the following ways:

- Failing to implement Student's IEP services in the school classroom and instead implementing them in the home;
- Failing to implement Student's IEP services and supports in-person by a special education teacher or related service providers;
- Failing to implement Student's IEP services as an in-person direct service to Student, specifically, the specialized academic instruction which was required to be implemented in a public integrated facility, as well as the

following related services: speech and language, behavior, assistive technology, health, nursing and health services.

Student also alleges that beginning in mid-March 2020, Lincoln Unified School District denied Student a FAPE by making substantial and material alterations of Student's November 5, 2019 and November 5, 2020 IEP mandated services without proper notice to or consent by Parent, specifically:

- Changing the location where Student was to receive his IEP services from a school classroom to Student's home;
- Precluding Student from receiving in-person IEP services and supports by a special education teacher or related service providers;
- Changing the method of delivery of Student's IEP services from an in-person direct service to Student to a remote service, specifically, the specialized academic instruction which required to be implemented in a public integrated facility, as well as the following related services: speech and language, behavior, assistive technology, health, nursing and health services.

The facts alleged in Student's complaint are sufficient. Student's complaint identifies the issues and adequate facts about the problem to permit Lincoln Unified School District respond and participate in a resolution session and mediation.

As a separate matter, Attorneys Carolyn E. Ruth and Patrick Donohue filed the complaint on behalf of Student and Parent. While Ruth is a California lawyer admitted to The State Bar of California in April 2021, Donohue is not an active member of The State Bar of California. Accordingly, Donohue is not authorized to practice law in

California, and as such, he was not authorized to sign any documents filed with OAH, including the complaint, as a representative of or on Student's or Parent's behalf.

## ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All prehearing conference and hearing dates in this matter are confirmed.
3. Attorney Patrick Donohue shall not sign any documents filed with OAH as a representative of or on Student's or Parent's behalf during the pendency of this matter unless and until he becomes an active member of The State Bar of California, at which point all filings shall include his California State Bar number.

IT IS SO ORDERED.

*Laurie Gorsline*

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings