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 2023060798

ORDER DETERMINING FIRST AMENDED 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 School as Respondents. On June 30, 2023, Lincoln filed a Notice of Insufficiency as to the complaint. OAH issued an Order determining the complaint insufficient as to issue 1(f) on July 5, 2023. That order granted Student 14 days to file an amended complaint.

Student filed his First Amended Complaint on July 17, 2023. On July 21, 2023, Lincoln filed a Notice of Insufficiency as to Student's First Amended Complaint

requesting sanctions for failure to correct the previously identified insufficiency from the original complaint, and for failure to file the amended the complaint within 14 days or alternatively file a motion seeking permission to amend the complaint.

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. Issue 1(f) remains insufficient. The issues are discussed below.

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 These claims were previously determined to be sufficient as stated in the July 5, 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 issue 1(f). The minor alteration to this claim does not correct the previously identified insufficiencies and, thus, issue 1(f) remains insufficient.

Issue 1(f) as stated in the 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 predetermined IEP?" As pled in the amended complaint, this issue 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).)

Student's issues 1(f) fails to give Lincoln adequate notice of the claim asserted against it to allow Lincoln the ability to prepare for resolution session, mediation or hearing.

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. First of all, Lincoln failed to establish the amended complaint was filed late. Student had until July 19, 2023, to file his amended complaint following the July 5, 2023 order. Student's amended complaint was filed on July 17, 2023. Furthermore, Lincoln did not demonstrate that Student's failure to articulate a sufficient pleading in Issue 1(f) was intentional or was indicative of bad faith in any way. Errors in pleadings, such as misstating dates or failing to clearly articulate an allegation, are not automatically considered bad faith. Finally, Lincoln failed to establish any loss resulting from the insufficient First Amended Complaint. 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), (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. 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), (d), (e), and (f), 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