BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT, ALLIANCE RENEE AND MEYER LUSKIN ACADEMY HIGH, ALLIANCE PIERA BARBAGLIA SHEHEEN HEALTH SERVICES ACADEMY, AND VOX COLLEGIATE OF LOS ANGELES MIDDLE SCHOOL.

OAH CASE NUMBER 2024020025

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

FEBRUARY 20, 2024

On January 31, 2024, Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Los Angeles Unified School District, Alliance College Ready Public Schools, and VOX Collegiate, Inc. On February 14, 2024, OAH granted Student's request for leave to file an amended complaint, deeming the amended complaint filed on that date. Student's amended named Los Angeles Unified School District, Alliance Renee and Meyer Luskin

Academy High, Alliance Piera Barbaglia Sheheen Health Services Academy, and VOX Collegiate of Los Angeles Middle School. On February 15, 2024, Alliance Renee and Alliance Piera filed a notice of insufficiency as to the amended complaint. Student's amended complaint is referred to, below, as the complaint.

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 does the following:

- 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.
- includes facts about the problem.
- 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 FR 46,540-46541, 46699.)

Student's complaint alleges he attended Vox Collegiate between August 2021 and June 2022, Alliance Piera between August 2022 and December 2022, Alliance Renee between January 31, 2023, and June 20, 2023, and George Washington Preparatory Senior High School between January 2024 and the filing of the amended complaint.

Student alleges unilateral disenrollment, among other things, against Alliance College-Ready Public Schools, which is not a named party to the action. Accordingly, these allegations are not being attributed to other parties, here.

Student alleges four Issues against all respondents, collectively. Student alleges, in Issue 1, identified as A in the complaint, that respondents failed to timely, comprehensively, or appropriately assess him in all areas of suspected disability and determine all his educational needs since February 6, 2022.

Student alleges that respondents should have conducted assessments in psychoeducation, educationally related intensive counseling services, functional

behavior, occupational therapy, recreational therapy, speech and language, and assistive technology. Student alleges the list of assessments was not meant to be exhaustive, leaving the reader to guess at what other assessments he alleges the respondents should have conducted and when.

Student fails to allege specific facts identifying which respondent should have conducted which assessments while Student attended each school, or how any respondent would have been on notice of Student's need for an assessment in each specific area at any given point in time. Accordingly, Student's allegations in Issue 1 do not provide individual respondents with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. Issue 1, as currently pled is vague and confusing.

In Issue 2, or B, Student alleges respondents failed to design and implement appropriate individualized education programs, IEPs, since February 6, 2022. Student's contention that none of the respondents designed, or offered, Student an appropriate IEP is reviewed first as Issue 2A.

Student supports Issue 2A with general allegations that respondents did not base IEPs on current assessments or data, that they did not find him eligible under other health impairment or offer services for other health impairment and did not offer appropriate academic or social-emotional related services. For the reasons set forth below, Student's complaint alleges sufficient information regarding Issue 2A, as to each respondent.

Student alleges that VOX Collegiate held an individualized education program, IEP, team meeting on May 26, 2022, which was grossly inadequate, given Student's continued failing grades and low attendance, also referred to in the complaint as school

avoidance. Student alleges the IEP offered insufficient resource specialist program services and counseling, and no behavior goals, among other things. Student's complaint alleges an awareness and understanding of the issues forming the basis of the complaint as to Vox Collegiate. Although Student frames all issues as corresponding, generally, to all respondents, the statement of facts as to Vox Collegiate provides enough information for Vox Collegiate to participate in mediation and prepare for hearing as to Issue 2A.

Student alleges that Alliance Piera did not offer an IEP between August 2022 and December 2022, while Student attended school there. Student contends an IEP team meeting should have been conducted due to Student continuing to fail classes and school aversion. Student provides enough information for Alliance Piera to participate in mediation and prepare for hearing as to Issue 2A. Liberally construed, Issue 2A states a claim that Alliance Piera denied Student a FAPE by failing to offer an IEP appropriate to address Student's needs in school aversion and lack of progress from August 2022 through December 2022.

Student alleges that Alliance Renee held a late 30-day review IEP team meeting on April 26, 2023. The IEP noted Student's chronic absenteeism, stated that Student may appear to be withdrawn, did not typically socialize with other students or participate in group activities, and that a teacher expressed concern for Student's emotional well-being including anxiety. Student also alleged the IEP did not address his eligibility of other health impairment. Student provides enough information for Alliance Piera to participate in mediation and prepare for hearing as to Issue 2A by identifying several areas he contends should have been addressed in an appropriate IEP, between January 31, 2023, and June 20, 2023.

Similarly, the complaint, at page 9, provides specific information regarding what Student contends should have been part of an IEP while he attended George Washington. Student identifies the need for counseling services, an aide, and home hospital services, to address social-emotional needs, school aversion, being extremely behind in school, and having a learning disability. Student alleges attending George Washington for twelve days, pinpointing the brief period Los Angeles must review to participate in mediation and prepare for hearing.

Issue 2B, regarding material failure to implement IEPs, does not provide respondents with sufficient information to participate in mediation or prepare for due process hearing. Student does not allege any specific information regarding which IEP or IEPs which respondent or respondents materially failed to implement. Student merely alleges the conclusion that Student did not have an IEP that could be appropriately implemented. Accordingly, Issue 2B is insufficient as to each respondent.

Issue 3, or Student's C, alleges a denial of parental participation against all respondents for:

- failure to provide prior written notice when refusing to assess in all areas of suspected disability and an educationally related intensive counseling services assessment regarding school aversion in Issue 3A.
- failure to provide copies of IEPs, prior written notice, and assessment plans in Spanish and failure to provide a Spanish language interpreter at IEP team meetings, in Issue 3B.
- failure to provide complete student records in response to Student's attorney's record request, in Issue 3C.

Student's Issue 3, in its entirety, fails to provide respondents with the required description of the problem and facts relating to the problem, for each of the respondents to participate in mediation and prepare for hearing. Regarding Issue 3A, Student does not allege which specific assessment each of the respondents refused to conduct or when such assessments were requested. Regarding Issue 3B, Student does not allege which IEPs, assessment plans, or prior written notice were not translated into Spanish, or by which respondent, or what notice Student provided to any respondent that translations were necessary. Nor does Student allege which respondent failed to provide prior written notice, in response to what event. Moreover, Student does not identify which respondent failed to have a Spanish language interpreter available at which IEP team meeting. Finally, regarding Issue 3C, Student does not allege the date on which any request for student records was made to any of the respondents. Accordingly, Issue 3, in its entirety, is not sufficiently pled.

Alliance Renee and Alliance Piera also contend that Student failed to sufficiently state proposed resolutions in that the resolutions are not tailored as to each respondent, individually. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are not addressed to respondents individually. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time.

ORDER

1. Issue 2A as to each respondent is sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).

2. Proposed resolutions are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii)(IV).
3. Issues 1, 2B, 3A, 3B, and 3C of Student's complaint are insufficiently pled under title 20 United States Code section 1415(c)(2)(D), as to each respondent.
4. FILING PARTY shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
5. 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.
6. If FILING PARTY fails to file a timely amended complaint, the hearing shall proceed only on Issue 2A.

Cole Dalton

Cole Dalton
Administrative Law Judge
Office of Administrative Hearings