BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WALNUT CREEK SCHOOL DISTRICT.

OAH CASE NUMBER 2023030308

ORDER FINDING DUE PROCESS COMPLAINT INSUFFICIENT

MARCH 24, 2023

On March 9, 2023, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Walnut Creek School District. On March 23, 2023, Walnut Creek timely filed a notice of insufficiency as to 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) of the Individuals with Disabilities Education Act, called the IDEA.

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, called a FAPE; (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, and 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.)

The statute of limitations in California on special education claims is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or (ii) the local educational agency's

withholding of information from the parent that was required to be provided to the parent.

Here, self-represented Parents on behalf of Student allege three claims. Each claim is very vague, and even when read in unison, Student's claims do not individually describe the problems or facts related to the problems.

Problem 1 alleges that Walnut Creek did not offer Student a FAPE, and is uncertain as to time, and as to which offers were insufficient or why. It alleges that two experts believe an offer of FAPE is not appropriate, but the specific offer is not identified.

Problem 2 alleges that Student was not offered a FAPE under the standards of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), which is a different standard from FAPE under the IDEA, for kindergarten through fourth grade. No details about the alleged denial of FAPE, or allegations regarding exceptions to the two-year statute of limitations for special education claims are stated.

Problem 3 alleges that Walnut Creek has delayed FAPE to Student by not providing services to remediate Student's reading, mathematics, dyslexia, attention deficit hyperactivity disorder, dyscalculia, or dysgraphia. Student requests "OC" testing and therapy, which is not defined, and counseling, although these remedies are not clearly related to the academic and attention disabilities alleged.

Reading the complaint as a whole does not provide clarity. Problem 1 alleges one inappropriate offer, so it is unclear if the five-year period referenced in Problem 2 is intended to apply to Problem 1 as well, or to Problem 3. Student states a list of educational needs in Problem 3, but in an attachment to Problem 1, appears to seek a remedy for Student's dyslexia only. In an attachment to Problem 3, Student seeks free

or reduced breakfast and lunches, transportation between school and daycare as needed by Parents, access to daycare facilities, access to technology, and access to extracurricular activities, with no apparent connection to Student's alleged disabilities.

Lastly, there are no allegations supporting an exception to the statute of limitations anywhere in the complaint. Therefore, it is unclear if Student intends to state claims for alleged denials of FAPE occurring before March 9, 2021, more than two years prior to the date of filing the complaint, in Problems 1, 2 or 3.

Accordingly, Student's complaint fails to provide Walnut Creek with the required problem descriptions and the facts relating to the problems.

A parent without an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request.

ORDER

1. Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
2. Student will be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The amended complaint must comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii) and must be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates previously set in this matter are vacated.

Alexa Hohensee

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Administrative Law Judge

Office of Administrative Hearings