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 AMENDED COMPLAINT SUFFICIENT

APRIL 11, 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. OAH found Student's complaint insufficient on March 24, 2023. On April 6, 2023, Student timely filed an amended complaint. On April 10, 2023, Walnut Creek filed a timely notice of insufficiency as to Student's amended 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: (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 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.

Student alleges three problems in the amended complaint. Student has adequately addressed the insufficiencies identified in the original complaint.

Problem 1 alleges that Walnut Creek did not offer Student a FAPE. Although originally uncertain as to time, and as to which offers were insufficient or why, Problem 1 now includes an attachment that identifies the FAPE offer in question as contained in the December 9, 2022 individualized education program, or IEP, as amended on January 20, 2023. Problem 1 also alleges the FAPE offer is not appropriate because it does not include a nonpublic, one-to-one placement at a school that specializes in dyslexia, offers insufficient time for the reading interventions offered, and does not adequately address Student's dyslexic, dysgraphic, and dyscalculia needs.

Problem 2 alleges 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.) (Section 504), which is a different standard from FAPE under the IDEA, for kindergarten through fourth grade. Student now alleges details about the alleged denial of FAPE, and that Parents did not know of the violations until the complaint was filed. Parents are relying on law from the Third Circuit, which is not precedent in the Ninth Circuit, and the facts alleged appear to show that Parents were aware during the times alleged that their child's educational needs were not, in their opinion, being met. In addition, OAH does not have jurisdiction over 504 claims. However, whether Problem 2 allegations contain an exception to the statute of limitations, and whether this claim is barred by lack of OAH jurisdiction, is not determined in a notice of insufficiency. The facts alleged are sufficient to provide Walnut Creek with an awareness and understanding of the issues at the basis of Problem 2.

Problem 3 alleges that if Student attends a part-time or full-time nonpublic school, Student is still entitled to transportation, and to participate in meals, extracurricular activities, and inclusion opportunities with peers, and access is proposed as a resolution. Student also alleges that she should be assessed for occupational therapy as hypersensitivities are a suspected area of disability, and for assistive technology to support her educational needs. Student also alleges that a neuropsychological assessment is warranted to inform her IEP team of the cause of her struggles with reading, writing and math, and because autism is a suspected disability.

The facts alleged in Problems 1, 2, and 3 of the amended complaint are sufficient. Those problems identify the issues and adequate facts about the problem to permit Walnut Creek to respond and participate in a resolution session and mediation.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings