BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WALNUT CREEK INTERMEDIATE SCHOOL.

OAH CASE NUMBER 2022080525

# ORDER FINDING DUE PROCESS COMPLAINT SUFFICIENT AS TO UN-EXPEDITED ISSUES 1 AND 3 AND DENYING NOTICE OF INSUFFICIENCY AS TO EXPEDITED ISSUE 2

AUGUST 26, 2022

On August 17, 2022, Parent 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 Intermediate School. On August 24, 2022, Walnut Creek 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).

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing for specific reasons. Specifically, an expedited hearing can be requested to appeal to appeal a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing start within 20 school days from the hearing request. There is no provision for expedited hearings under section 1415(k) to test the complaint's sufficiency. Indeed, there is insufficient time to complete the NOI process in expedited hearings.

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.)

Student alleges three claims. Issue 1 alleges that in May 2022, Parent discovered that Student's individualized education program, or IEP, accommodations had not been implemented that semester, and resulted in Student failing seventh grade math. Issue 2 alleges that Student was taken out of class and suspended so frequently from January 2022 through May 2022 for disciplinary investigations and incidents that it interfered with his access to education. Issue 3 alleges that school administrators created an environment in May 2022 that made Student mentally and physically ill and also interfered with Student's access to education.

Disciplinary removal of a child from more than 10 days of school constitutes a change of placement. (34 C.F.R. § 300.536.) Student's allegations in Issue 2 of multiple suspensions and removals from the classroom are sufficient to state a claim of disciplinary change of placement and entitles Student to an expedited hearing. No notice of insufficiency is permitted on this expedited issue.

Issues 1 and 3 each allege a denial of a FAPE, for failure to implement Student's IEP and for other actions and inactions that deprived Student of educational opportunity. Student's Issues 1 and 3 identify the issues and adequate facts about the problem to permit Walnut Creek to respond and participate in a resolution session and mediation.

Therefore, Student's statements of Issues 1 and 3 are sufficient.

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 resolution stated in Student's complaint is a publicly funded placement at

a private school, and is well-defined. Student has met the statutorily required standard regarding proposed resolutions.

## ORDER

1. Walnut Creek's notice of insufficiency is denied as to Issue 2, which is an expedited claim not subject to a determination of sufficiency.
2. The complaint at Issues 1 and 3 is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
3. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

*Alexa Hohensee*

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings