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 2023120791

ORDER OF DETERMINATION OF INSUFFICIENCY OF DUE PROCESS COMPLAINT

JANUARY 5, 2024

On December 19, 2023, 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 January 3, 2024, 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).

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; *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.)

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), called IDEA, is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their

parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disabilities Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51).

Student's complaint alleges seven insufficiently pled claims. The complaint fails to provide Walnut Creek with the required problem descriptions and the facts relating to the problems.

With respect to Student's complaint in general, Student failed to identify any individualized education program, called IEP, which determined Student's eligibility for special education and related services, the date of consent to such IEP, and the specific contentions raised to the content and implementation of any IEP.

Student attached to his complaint a letter from March 13, 2023, initiating a compliance complaint with the California Department of Education, and a letter, dated October 31, 2023, seeking an appeal of the compliance complaint determination.

Student's due process complaint requests that "all issues be put forth together on a non-expedited basis." This statement appears to be a request to have both the due process complaint and the compliance complaint appeal addressed in one hearing.

OAH does not have jurisdiction to determine issues raised in a compliance complaint with the California Department of Education. Further, each letter contains a series of allegations which, even if incorporated into Student's request for due process, do not indicate any claims under the IDEA. (20 U.S.C. § 1400 et. seq.)

Issue One alleges, as a safety issue, that from September to December 2023, Student was bullied and harassed, culminating in in a physical altercation in which Student was suspended and the other student was not. Issue One raises no issues related to a denial of a free appropriate public education, called FAPE. Issue One is insufficiently pled.

Issue Two alleges that Walnut Creek transferred Student to Tice Creek School without guardian permission resulting in and transportation to school with much difficulty due to his guardian's disability. Student fails to provide any factual claims that support a claim that the guardian's permission was required for the transfer, or that transportation was required under an IEP or that a failure to provide transportation resulted in a denial of FAPE. Issue Two is insufficiently pled.

Issue Three alleges the Walnut Creek failed to evaluate and implement an IEP and provide Student a FAPE. The factual allegation simply states that the guardian was asked to sign a document on September 11, 2023, to acknowledge an IEP team meeting

which did not take place. Student fails to indicate how Walnut Creek failed to evaluate Student, what areas were not assessed, which IEP was not implemented, and what areas in the IEP were not implemented, or in what other manner Student was denied a FAPE. Issue Three is insufficiently pled.

Issue Four alleges improper discipline, by reiterating the same information as contained in Issue One. For the same reasons as discussed in Issue One, Issue Three is insufficiently pled.

Issue Five reverts to May 2022 through October 18, 2022, in which Student alleges improper discipline at a different school and references three incidents in which Student was disciplined or suspended when other students were not. Although Issue Five mentions Student's attention deficit hyperactivity disorder, called ADHD, it failed to present factual claims regarding any IEP or special education eligibility based on ADHD. Issue Five also alleges Walnut Creek staff openly discussed Student's medication and filmed Student in the classroom without permission. Student failed to provide any factual allegations to support these claims. Issue Five is insufficiently pled.

Issue Six alleges that during the 2022-2023 school year, Walnut Creek failed to evaluate and implement an IEP, and failed to provide Student a FAPE. Issue Six fails to allege when guardian requested evaluations and IEP team meetings, which IEP was not being implemented, for how long, and why delayed. Issue Six is insufficiently pled.

Issue Seven alleges retaliation for filing the compliance complaint, resulting in a transfer to Tice Creek without guardian's consent. OAH does not have jurisdiction based on retaliation, except where the action independently results in a denial of FAPE. Student fails to allege how the school transfer denied Student a FAPE. Issue Seven is insufficiently pled.

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 request relief in areas outside of OAH's jurisdiction, such as removal of a teacher or staff member and/or direct placement in a private school at public expense.

ORDER

1. Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall 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.

IT IS SO ORDERED.

Judith Pasewark

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings