

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 FINDING ISSUES 1, 2, 3, AND 4 OF THE SECOND
AMENDED COMPLAINT SUFFICIENT AND ISSUE 5
INSUFFICIENT

JANUARY 30, 2024

On December 19, 2023, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Walnut Creek School District, called Walnut Creek. On January 5, 2024, OAH granted a notice of insufficiency by Walnut Creek as to Student's complaint.

On January 22, 2024, Student filed an amended complaint. On January 29, 2024, Student filed a second amended complaint. On January 29, 2024, Walnut Creek filed a notice of insufficiency as to Student's second 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, 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 Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), called 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 purpose of the 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).) 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 second amended complaint alleges five issues, called complaints in the second amended complaint. Although not expressly alleged, Student attaches an individualized education program, called an IEP, to the second amended complaint demonstrating that Student has been eligible for special education and related services from 2019 as a student with other health impairment, specifically for his attention deficit hyperactivity disorder, called ADHD. The separate issues are difficult to understand when read separately but are readily understood when read as a whole.

The second amended complaint alleges at Issue 1 that Student was denied a FAPE when he was transferred to Tice Creek, a school in Walnut Creek, in April 2023, because Walnut Creek did not provide a safe learning environment. It alleges Student was so consistently bullied that he became afraid to attend school, and when he attended school was removed for defending himself, missing instructional time. Issue 1 alleges sufficient facts to provide an awareness and understanding of that issue.

At Issue 2, the second amended complaint alleges during the 2022-2023 school year, at Walnut Creek Intermediate School, Student was denied a FAPE because he was

frequently disciplined by being sent out of the classroom and missed significant instructional time. Student also contends his teacher in 2022-2023 mocked him for his disability and permitted unchecked bullying of Student inside the classroom and on the playground. Student alleges that placement at Walnut Creek Intermediate School did not provide a FAPE. Sufficient facts are alleged at Issue 2 to give Walnut Creek and awareness of the issue and state a claim.

The second amended complaint alleges at Issue 3 that due to registration errors by Walnut Creek, Student's placement was improperly returned to Tice Creek outside of the IEP process. There, Student alleges he did, and continues to, experience extreme bullying and missed instructional time and he is not receiving a FAPE. There are sufficient facts to make Walnut Creek aware that Student is alleging Tice Creek is a placement that does not provide a FAPE for the 2023-2024 school year.

At Issue 4, the second amended complaint alleges Student was denied a FAPE throughout the 2022-2023 school year because Parents repeatedly requested IEP team meetings to address concerns with Student's educational program, but Walnut Creek did not convene an IEP team meeting until May 2023. It also alleges that in the 2023-2024 school year, Student was denied a FAPE because his last consented to IEP was not implemented. These facts are sufficient to state a claim at Issue 4.

At Issue 5 of the amended complaint, Student repeats from previous issues that during the 2022-2023 and 2023-2024 school years, he was removed from the classroom for conduct that was the manifestation of his disability and missed the equivalent of half a year of instructional time. However, Student alleges that these acts constituted discrimination, and OAH has no jurisdiction over claims of discrimination. Issue 5 fails to allege facts stating a claim under the IDEA and is insufficient.

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).) In the second amended complaint, Student seeks placement at a nonpublic school, transportation, compensatory education, prospective services, and that certain disciplinary documents be removed from his educational records. These are appropriate forms of relief that may be granted for a denial of FAPE. The fact that Student also requests removal or reprimand of staff, which are personnel matters outside the jurisdiction of OAH, does not render Student's appropriate requests for relief insufficient.

ORDER

1. Issues 1, 2, 3 and 4 of Student's second amended complaint are sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. Issue 5 of Student's second amended complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D).
3. Student is permitted to file a third amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).
4. The third 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. The filing of a third amended complaint will restart the applicable timelines for a due process hearing.

5. If Student fails to file a timely third amended complaint, the hearing shall proceed only on Issues 1, 2, 3, and 4 of the second amended complaint.

Alexa Hohensee

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings