BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WALNUT CREEK SCHOOL DISTRICT, WALNUT CREEK INTERMEDIATE SCHOOL AND TICE CREEK SCHOOL,

OAH CASE NUMBER 2023120370

ORDER DETERMINING INSUFFICIENCY OF DUE PROCESS COMPLAINT (NON-EXPEDITED ISSUES) AND DISMISSING NON-EXPEDITED ISSUES

DECEMBER 13, 2023

On December 8, 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, Walnut Creek Intermediate School and Tice Creek School. On December 12, 2023, Walnut Creek School District filed a Notice of Insufficiency as to the complaint, which was amended on December 13, 2023 to be brought on behalf of all respondents.

APPLICABLE LAW

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.)

DISCUSSION

Student's complaint alleges expedited issues which are addressed in a separate Order. Student's complaint alleges non-expedited issues numbered 1-4 against Tice Creek School and non-expedited issue numbered 1 against Walnut Creek Intermediate School. The allegations are insufficient to put either of the two respondents on notice of the nature of the claims against them, as they contain no background facts of any kind as to any of the issues. Issues 1-4 stated against Tice allege "Failure to have IEP meeting in a timely manner; Failure to implement IEP (because there was no meeting even though parent was asked to sign a form acknowledging a meeting that did not take place); Bullying; and Failure to implement IEP guidelines post-meeting." Other than these statements of the claims, no information is presented that would put Tice on notice of the factual basis for them. Similarly, issue 1 against Walnut Creek Intermediate School states simply "Retaliation For complaints" with no factual information of any kind.

Thus, the complaint as to these issues fails to provide the respondents with the required problem description and the facts relating to the problem.

ORDER

1. Issues numbered 1-4 against Tice Creek School and numbered 1 against Walnut Creek Intermediate School are insufficiently pled under title 20 United States Code section 1415(c)(2)(D). These issues are dismissed from the complaint.
2. This case shall proceed only as an expedited matter with the expedited issues.

3. Student may not amend this expedited case to include non-expedited issues. Student may file another complaint for the issues dismissed here and a new, unexpedited case will be opened. That complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii).

IT IS SO ORDERED.

June Lehrman

June Lehrman
Administrative Law Judge
Office of Administrative Hearings