

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011100551

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On October 17, 2011, Student filed a Request for Due Process Hearing (complaint) naming the Los Angeles Unified School District (District) as respondent. Student's complaint set forth the following issues:

1. Did District deny Student a free appropriate public education (FAPE), between October 17, 2009 and October 17, 2011, by failing to provide Student with psychological therapy to overcome trauma resulting from sexual harassment?
2. Did District deny Student a FAPE, between October 17, 2009 and October 17, 2011, by hiding documents that could assist Student with her social and intellectual development?
3. Did District deny Student a FAPE, between October 17, 2009 and October 17, 2011, by failing to provide Student with independent assistance in reading?
4. Did District fail to comply with a settlement agreement between the parties, between October 17, 2009 and October 17, 2011?
5. Did District deny Student a FAPE, between October 17, 2009 and October 17, 2011, by giving Student erroneous test scores and grades; and
6. Did District deny Student a FAPE, between October 17, 2009 and October 17, 2011, by providing incompetent teachers and insufficient instructional time due to shortened school days on Tuesdays?

On January 18, 2012, District filed a motion to dismiss Issues 2, 4, 5, and 6. Specifically, District alleges the Office of Administrative Hearings (OAH) cannot adjudicate Issue 2, because the issue of hidden documents is outside of OAH's jurisdiction, as it does not relate to the proposal or refusal to initiate or change the identification, assessment, or the educational placement or the provision of a FAPE. Similarly, District claims that OAH lacks

jurisdiction to adjudicate Issue 4, as it references District's alleged failure to comply with a settlement agreement, which OAH lacks the authority to enforce. District also claims OAH cannot hear Issue 5, which alleges District's issuance of incorrect grades, as OAH lacks authority to order a school district to modify a student's grades or transcripts. Finally, District contends OAH does not have jurisdiction to hear Issue 6, which references incompetence on the part of the teachers, as neither IDEA nor public policy support a due process hearing "venturing into the realm of whether an individual is a competent or qualified teacher."

On January 26, 2012, Student filed an opposition to District's motion.

APPLICABLE LAW

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure or the equivalent of a "judgment on the pleadings."

Parents have 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).) A complaint is deemed to be sufficient if a notice of insufficiency is not filed by the respondent public agency within 15 days of receipt. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) In *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 U.S. Dist. Lexis 26541, the United States District Court for the Northern District of California held that when the Student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION

Here, with respect to Issues 2, 5, and 6, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits and/or a judgment on the pleadings. In particular, District cannot use what it styles as a motion to dismiss to parse the words of the allegations in the complaint after District failed to challenge the sufficiency of the complaint through an NOI. In other words, OAH is bound to treat all allegations of the complaint as sufficient. Further, because the pleading has been deemed sufficient, whether Student was denied a FAPE as a result of hidden documents, incorrect

grades, or incompetent teachers are factual matters on which that Student has the right to present evidence within the context of a due process hearing. As for Issue 4, assuming Student contends that District's failure to comply with the terms of settlement agreement resulted in a denial of FAPE, OAH would have jurisdiction. As such, Issue 4 cannot be dismissed at this time.

Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: February 29, 2012

/s/

CARLA L GARRETT
Administrative Law Judge
Office of Administrative Hearings