

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FILLMORE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010060460

ORDER GRANTING MOTION TO  
DISMISS AND NOI WITH LEAVE TO  
AMEND

On June 14, 2010, Student filed a due process hearing request that set forth three issues. Issue One alleged that Student was not getting the full amount of physical education he was supposed to receive under a settlement agreement because the District did not follow attendance policies or provide direct observation of Student. As a proposed remedy, Student seeks physical education during the school day. Issue Two alleges that Student's parent did not get notice of Student's absences. As a remedy, Student seeks that District follow its own policies. Issue Three alleges that Student is in an independent study program without proper documentation that it is appropriate. As a remedy, Student seeks "supporting documentation" that he is appropriately placed. No supporting facts are alleged.

On June 16, 2010, District filed a Motion to Dismiss and in the alternative, a Notice of Insufficiency as to Issues Two and Three. District contends that all three issues are outside of OAH jurisdiction because none of the issues on their face allege a problem with eligibility, assessment, or the provision of a free appropriate public education under the IDEA. In particular, District contends that Issue One seeks enforcement and modification of a settlement agreement regarding physical education that runs through December of 2010. As to Issue Two, District contends that an allegation regarding notification of Student's absences, without more, fails to state an IDEA claim and is otherwise insufficient to put the District on notice. As to Issue Three, District contends that it is either limited to enforcement of the settlement agreement, or otherwise insufficient to put the District on notice. In support of its motion, the District provided evidence of a settlement agreement between that parties that provided for Student to have independent study physical education after school until December 14, 2010 under the supervision of District personnel. The District also provided evidence that District informed parent in June of 2010 that it had concerns about Student's attendance at the independent study sessions. As discussed below, because the issues as alleged are outside OAH jurisdiction, the motion to dismiss will be granted. However, because, as District points out, it cannot be discerned exactly what Student is alleging in Issues Two and Three, Student will be given leave to amend the due process hearing request.

## APPLICABLE LAW AND ANALYSIS

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), 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 FAPE 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 Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman’s Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) “Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties’ expressed objective intent, not their unexpressed subjective intent, governs.” (Id. at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.)

A Notice of Insufficiency relates to whether the District is able to understand the allegations. The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>1</sup> 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 contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed

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<sup>1</sup> 20 U.S.C., § 1415(b) & (c).

resolution of the problem to the extent known and available to the party at the time.<sup>2</sup> 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.<sup>3</sup>

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>4</sup> 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.<sup>5</sup> Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.<sup>6</sup>

Here, Issue One is facially outside of OAH jurisdiction as it seeks either enforcement and/or modification of a settlement agreement without any allegations that could be interpreted as alleging a denial of a free appropriate public education.

Issue Two is facially outside of OAH jurisdiction and is also insufficient. On its face, the allegation appears to concern parental notification of absences, an issue that without more does not concern the provision of special education. Thus, this allegation is both outside OAH jurisdiction and insufficient.

Finally, Issue Three is facially outside of OAH jurisdiction and is also insufficient. On its face, the allegation appears to concern placement in independent study, but there is nothing in the allegations that could be interpreted as identifying an issue with the provision of special education. Thus, this allegation is both outside of OAH jurisdiction and insufficient.

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<sup>2</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

<sup>3</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

<sup>4</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>5</sup> *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board 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, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3 [nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3 [nonpub. opn.].

<sup>6</sup> Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

## ORDER

1. As currently stated, all issues in the due process hearing request are outside of OAH jurisdiction. In addition, Issues Two and Three are insufficient.

2. All dates previously set in this matter are vacated.

3. Student shall be permitted to file an amended due process hearing request not later than 14 days from the date of this order. Student's parent is advised that under Education Code section 56505, a parent who is not represented by an attorney may request that the Office of Administrative Hearings provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a due process hearing request. Student's parent is encouraged to contact OAH for assistance in amending the due process hearing request.

4. If Student fails to file a timely amended due process hearing request, the matter will be dismissed.

Dated: June 28, 2010

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings