

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HOPE ELEMENTARY SCHOOL  
DISTRICT AND SANTA BARBARA  
COUNTY SELPA.

OAH CASE NO. 2013050452

ORDER DENYING DISTRICT'S  
MOTION TO DISMISS AND FINDING  
COMPLAINT SUFFICIENT<sup>1</sup>

On May 10, 2013, Parent on behalf of Student (Student) filed a Due Process hearing Request<sup>2</sup> (complaint) with the Office of Administrative Hearings (OAH) naming the Hope Elementary School District (District) and the Santa Barbara County Special Education Local Plan Area (SELPA)<sup>3</sup> as respondents.

On May 23, 2013, the District filed a motion to dismiss, or in the alternative, notice of insufficiency. The District asserts that Student's complaint is rendered moot by a private settlement agreement which was signed by the parties on March 21, 2013. Student did not file an opposition to the 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.

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

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<sup>1</sup> On May 30, 2013, OAH erroneously issued an incorrect order entitled "Order Granting/Denying Motion to Dismiss," which should be disregarded by the parties.

<sup>2</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

<sup>3</sup> On May 30, 2013, OAH issued an order dismissing the Santa Barbara SELPA as a party to this matter.

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.) OAH’s limited jurisdiction does not include jurisdiction over claims alleging a party’s failure to comply with a settlement agreement. (*Id.* at p. 1030.)

More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., March 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, 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 (FAPE). According to the court in *Pedraza*, issues involving merely a breach of a settlement agreement do not fall under the jurisdiction of OAH.

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>4</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 FAPE to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.<sup>5</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>6</sup>

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<sup>4</sup> 20 U.S.C. § 1415(b) & (c).

<sup>5</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

<sup>6</sup> 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.”<sup>7</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act and the relative informality of the due process hearings it Authorizes.<sup>8</sup> Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.<sup>9</sup>

## DISCUSSION

On March 21, 2013, Student and the District entered into a private settlement agreement (Agreement), whereby the District agreed to fund 25 hours of Lindamood-Bell services, and to provide general education based services, in exchange for a waiver of educational claims by Student, through the date of the Agreement. The Agreement is based upon the following recital:

Parent asserts that [Student] is behind and requires Lindamood-Bell services. The District assessed [Student] and determined he is ineligible for special education and related services. The Parties disagree that Student requires Lindamood-Bell services. In order to avoid the time and expense of litigating Student’s eligibility and need for Lindamood-Bell services, the Parties have agreed to enter into this Agreement.

The Agreement did not provide Student eligibility for special education, nor did it resolve a lawsuit which existed between the parties.

Here, in his complaint, Student asserts that the District has denied him a FAPE by (1) denying him eligibility for special education and related services; (2) failing to provide Lindamood-Bell reading therapy; (3) failing to assess Student in the area of occupational therapy, and; (4) that Student experiences stress and anxiety while at school because he has fallen academically behind his peers. Student, who is in the sixth grades, alleges that he has been denied educational rights throughout the sixth grade.

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<sup>7</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>8</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>9</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).

The District argues that, per the terms of the Agreement, it has made preparations to deliver 25 hours of Lindamood-Bell services during a six week period of the upcoming 2013 summer, and has begun implementing the general education based services called for in the Agreement. Because the District is performing its contractual duties, the District asserts that Student is bound under the Agreement to waive the educational claims included in the complaint.

However, the Agreement does not contain a future waiver, or a waiver for unknown claims. Consequently, the Agreement does not waive any claims from March 22, 2013, forward. The District fails to explain why Student's claims which postdate the Agreement, from March 22, 2013, through the remainder of Student's sixth grade year, should be dismissed. Moreover, while the Agreement specifically addresses Student's claim for Lindamood-Bell services, at least through March 21, 2013, it is unclear from the face of the Agreement what other educational claims were contemplated by the Agreement. Ultimately, the District seeks a summary judgment in its favor when factual issues exist which requires an evidentiary hearing to interpret the Agreement's applicability to the present case. While the Agreement may present a defense to some of the issues raised in Student's complaint, a hearing is required to make this factual determination. OAH does not have the legal authority to grant summary adjudication given these facts. For these reasons, the District's motion to dismiss Student's complaint is denied.

In the alternative, the District argues that Student's complaint is insufficient.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student's complaint identifies the issues and adequate related facts about the problem to permit the District to respond to the complaint and participate in mediation and hearing. Student succinctly presents four issues in his complaint. Student argues he was denied a FAPE because the District (1) failed to find him eligible for special education and related services at an individualized education program (IEP) meeting; (2) failed to provide reading therapy; (3) failed to assess Student in the area of occupational therapy, and; (4) failed to remediate Student's stress and anxiety which was caused by the District's failure to provide him reading therapy. The complaint specifies that these violations occurred during Student's sixth grade year. The issues presented provide sufficient information for the District to know how to prepare for the hearing and how to participate in a resolution session and mediation. Student has met the statutorily required standard of presenting issues in a manner which is sufficient so that the District may respond to the alleged violations.

Student's proposed resolutions request a finding that the District denied him a FAPE by failing to find him eligible for special education and requests compensatory education in the areas of reading therapy, occupational therapy, tutoring and cognitive behavioral therapy. 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).) Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time it was plead.

ORDER

1. District's motion to dismiss is denied.
2. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
3. All previously scheduled dates shall remain on calendar.

IT IS SO ORDERED.

Dated: May 31, 2013

/s/

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PAUL H. KAMOROFF  
Administrative Law Judge  
Office of Administrative Hearings