BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

BRET HARTE UNION HIGH SCHOOL DISTRICT AND CALAVERAS COUNTY OFFICE OF EDUCATION,

OAH CASE NUMBER 2023020841

OAH CASE NUMBER 2023020285

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE, GRANTING MOTION TO AMEND AND DISMISSING ISSUES OUTSIDE OAH JURISDICTION

MAY 15, 2023

On May 15, 2023, Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Christian Knox, Attorney at Law, appeared on behalf of Student. Eliza McArthur, Attorney at Law, appeared on behalf of Bret Harte Union High School District and Calaveras County Office of Education. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

STUDENT'S MOTION TO AMEND

On May 10, 2023, after Parent retained counsel, Student filed a Motion to Amend the Due Process Hearing Request and a proposed amended complaint, to identify and clarify the issues for hearing. On May 12, 2023, Bret Harte and Calaveras County filed a Notice of Non-Opposition.

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

The motion was timely filed more than five days prior to the due process hearing and there was no opposition. The motion is granted. The amended complaint shall be deemed filed on the date of this order. The previously determined primary case designation in this consolidated matter remains, and the decision timeline in this consolidated matter shall be governed by Student's amended complaint filed by OAH on May 15, 2023, in OAH case number 2023020841. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

PREHEARING CONFERENCE STATEMENTS

At the PHC on April 3, 2023 and in the Order Following Prehearing Conference dated April 3, 2023, the parties were ordered to file new PHC statements at least three business days prior to the next PHC, and to clarify their issues in the new PHC statement. Neither party fully complied.

On May 10, 2023, Student filed a PHC statement, but failed to properly identify the issues for hearing as requested at the April 3, 2023 PHC and in the PHC Order. Bret Harte and Calaveras County failed to file any PHC statement until 4:02 PM the day before the PHC and failed to properly clarify their issues, in direct contravention of the April 3, 2023 Order.

The parties' failure to comply with the April 3, 2023 Order was addressed at the PHC on May 15, 2023 as reflected on the record. Both parties were ordered to file new PHC statements in conformity with the ALJ's instructions at the May 15, 2023 PHC, no later than three business days before the next PHC. OAH will consider setting an Order to Show Cause Re Sanctions if a party fails to comply.

DISMISSAL OF CLAIMS OUTSIDE OAH JURISDICTION

Bret Harte and Calaveras County's Issues Two through Four and Six in the original complaint were discussed at the April 3, 2023 PHC. At that time, the ALJ expressed a tentative decision to dismiss Issues Two through Four and Six for lack of jurisdiction but pursuant to counsel's request, gave the parties an opportunity to brief the issue prior to ruling.

On April 11, 2023, Bret Harte and Calaveras County filed a Supplemental Brief regarding the jurisdictional issue and a motion to amend their due process hearing

request. Student did not file a response. On April 17, 2023, OAH granted the motion to amend. In the Order Granting Motion to Amend Complaint, the parties were notified that OAH's authority to adjudicate the claims in Bret Harte and Calaveras County's amended complaint would be addressed at the PHC on May 15, 2023.

In the amended complaint, Bret Harte and Calaveras County list one issue with five alleged sub-issues. Specifically, they request that OAH adjudicate whether they offered Student a free appropriate education in the January 20, 2023 amendment to Student's May 17, 2022 IEP. In the sub-issues, Bret Harte and Calaveras County seek adjudication of matters which fall outside of the analysis of whether the January 2023 amendment IEP offered Student a FAPE, including whether Student's diabetes management plan updated after the January 20, 2023 IEP was appropriate given the Americans with Disabilities Act exclusion (Issue 1a), whether they implemented aspects of Student's IEP (Issues 1b, 1c and 1d), and whether Parent's consent to releases of information is required to provide Student a FAPE (Issue 1e). The only proposed resolution sought by Bret Harte and Calaveras County is, "[a]n order affirming that Agencies have offered a FAPE. . ." to Student.

At the PHC on May 15, 2023, OAH's authority to adjudicate the claims amended complaint filed by Bret Harte and Calaveras County was argued by the parties as reflected on the record. The ALJ took the matter under submission.

There is no summary judgment procedure in special education cases. OAH will, however, dismiss allegations and cases not within its jurisdiction. 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 free appropriate public education 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.

However, OAH does not have jurisdiction to adjudicate matters seeking declaratory relief or advisory opinions. (See Gov. Code, § 11465.10-11465.60; Cal. Code Regs, tit. 5, § 3089; see also *Garcia v. City of Los Angeles* (C.D. Cal. 2020) 481 F.Supp.3d 1031, fn. 25 ["court may not issue an advisory opinion"]; *Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540 ["the proper role of the judiciary does not extend to resolution of abstract differences of legal opinion"].)

Title 5 of the California Code of Regulations section 3089 expressly excludes special education due process hearings from the declaratory relief decision provisions set forth Government Code sections 11465.10 through 11465.60. Specifically, Government Code section 11465.10, which gives an agency authority to adjudicate matters under declaratory relief procedures does not apply to special education due process hearings. (Cal. Code Regs, tit. 5, § 3089.) Likewise, Title 5 of the California Code of Regulations section 3089 expressly excludes from special education hearing procedures, Government Code section 11465.20, which permits a person to apply to an agency for a declaratory decision as to the applicability to specific circumstances of a statute, regulation, or decision within the primary jurisdiction of the agency.

OAH has authority to grant relief to local educational agencies in certain circumstances. (See e.g., Ed. Code, § 56346, subd. (f) [mandating the local educational agency file for due process when parent refuses to consent to an IEP necessary to provide FAPE]; Ed. Code, § 56381, subd. (f)(3.) [seeking judicial override of a parent's

refusal to consent to reassessment]; 20 U.S.C. § 1415(k)(3) [where a local educational agency believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others]; 34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (b) [to determine appropriateness of assessment where parent requests an independent educational evaluation, including an independent evaluation which exceeds the cost criteria.])

Where a local educational agency seeks to have OAH adjudicate whether it offered a student FAPE, the entirety of the IEP offer must be analyzed for both procedural and substantive compliance. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 206-207.) First, the tribunal must determine whether the local educational agency has complied with the procedures set forth in the Individuals with Disabilities Education Act. (*Ibid.*) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) To determine whether an agency has offered FAPE the entire offer must be analyzed, not just a few component pieces as Bret Harte and Calaveras County's amended complaint has requested.

OAH does not have authority to adjudicate the issues pled by Bret Harte and Calaveras County which fall outside of the determination of whether the January 20, 2023 amendment to the May 17, 2022 IEP, specifically whether the later obtained January 25, 2023 diabetes management plan offered Student a FAPE as they request in Issue 1a, whether it implemented Student's IEP as they request in Issues 1b through 1d, and whether Parent's consent to releases of information were required to provide Student a FAPE as they request in Issue e. Instead, these are more properly defenses to Student's claims, not affirmative issues. Contrary to the arguments made by counsel for

Bret Harte and Calaveras County about implementation claims being part of the FAPE offer analysis, whether a student was offered a FAPE is determined by looking at what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) By these issues, Student improperly seeks declaratory relief, and has failed to provide any persuasive authority that permits OAH to adjudicate these piecemeal claims as part of a district-filed complaint seeking to have OAH declare it offered FAPE.

Likewise, Bret Harte and Calaveras County's request to also have OAH adjudicate as separate issues only three alleged components of the offer of special education and related services in Student's January 20, 2023 IEP as requested in Issues 1b through 1d, is improper and redundant. The individual component pieces of the IEP offer will necessarily be addressed along with all the other IEP components as part of the determination of whether at the time of the January 20, 2023 IEP it offered Student a FAPE, and complied with all procedural and substantive requirements.

Bret Harte and Calaveras County's attempts to call out only a few selected issues for OAH to decide and declare they offered FAPE, fails to recognize the difference between a student-filed and a district-filed case. While Parents may file for due process to challenge a single component of an IEP, the same is not true for local educational agencies. There is a distinct difference between a student asserting that a single component of an IEP denied FAPE, as opposed to a school district asserting that a single component offered the student a FAPE. Parents may challenge a single element of their child's IEP, such as the failure to offer a particular service, because that parent is essentially asserting that the student is being denied a FAPE because of the alleged deficiency created by that single element. However, even where a school district proves

that one element of a program is appropriate does not prove that the entire program offered Student a FAPE.

Education Code section 56346, subdivision (f) mandates that school district file for due process when a parent refuses to consent to a proposed IEP that it determines is necessary to provide FAPE. Notably, Education Code section 56346, subdivision (f) does not then authorize a hearing officer to approve only the component in dispute. Instead, it provides, "a due process hearing shall be initiated in accordance with Section 1415(f) of Title 20 of the United States Code." That section, in turn, provides that "a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education." (20 U.S.C. § 1415(f)(3)(E)(i).) Similarly, although Education Code section 56501, subdivision (a) allows a school district to file a complaint when there is a proposal or refusal to initiate or change the educational placement of a child, placement is broadly defined. Specifically, placement is defined as including ". . . that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP . . ." (Cal. Code Regs., tit 5, § 3042, subd. (a).) In short, the authority taken together make clear that neither state nor federal law provides for determining the validity of only certain portions of an educational program at a due process hearing in a district-filed case which seeks to have OAH declare that FAPE was offered.

Finally, Bret Harte and Calaveras County argued at the PHC that the releases of information which are the subject of Issue 1e was a form of assessment. However, as pled that issue does not fall within the provisions permitting a public agency to file for due process to obtain relief. (See Ed. Code, § 56381, subd. (f)(3.) Bret Harte and Calaveras County do not seek to override Parent's refusal to consent to an assessment

plan. Moreover, the single resolution requested only seeks a declaration that OAH offered FAPE.

For the foregoing reasons, Bret Harte and Calaveras County's Issues 1a through 1e are dismissed. The only remaining issue from Bret Harte and Calaveras County's amended complaint is Issue 1. The parties should be prepared to discuss at the next PHC whether OAH has jurisdiction to adjudicate this remaining issue where there has been no allegation that Parent has refused to consent to or has revoked consent to the January 20, 2023 IEP. (See Ed. Code, § 56346, subd. (f).)

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled

hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings