BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020910

ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND ORDER PARTIALLY GRANTING MOTION TO DISMISS ISSUES

MARCH 21, 2023

On February 16, 2023, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, referred to as OAH, naming Sacramento City Unified School District. OAH received a proof of service on February 27, 2023 and served a scheduling order on February 28, 2023. On March 17, 2023, Sacramento filed a Notice of Insufficiency as to the complaint as well as a Motion to Dismiss issues in the complaint.

APPLICABLE LAW

A free appropriate public education is referred to as a FAPE. An individualized education program is referred to as an IEP.

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).

The complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing for specific reasons. Specifically, an expedited hearing can be requested to appeal to appeal a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student conduct. This section requires an expedited hearing start within 20 school days from the hearing request. There is no provision for expedited hearings under section 1415(k) to test the complaint's sufficiency. Indeed, there is insufficient time to complete the NOI process in expedited hearings.

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.)

OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist*. (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) This limited jurisdiction does not include claims alleging a school district's failure to comply with a settlement agreement. (Id. at p. 1030.) *Wyner* held that "the proper avenue to enforce Special Education Hearing Office orders" was the California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.), and that "a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and

Special Education Hearing Office order in a prior due process hearing." (Wyner, supra, 223 F.3d at p. 1030.)

In *Pedraza v. Alameda Unified School Dist*. (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603), the District Court held that OAH has jurisdiction to adjudicate claims that allege a student was denied a free appropriate public education as a result of the violation of a mediated settlement agreement. However, a breach of a mediated settlement agreement should be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION

At the PHC for the expedited hearing on March 13, 2023, Parent stated the complaint had been personally served on a representative of Sacramento City named "Kelly." Sacramento City denied receipt of the complaint by any employee and submitted a declaration from Kelly Hood indicating she was not served with the complaint. Despite the undersigned requesting that Parent email a copy of the complaint to counsel on March 13, 2023, she did not do so. OAH provided Sacramento City a copy of the complaint on March 14, 2023. Although Parent's proof of service indicates the complaint was served on Sacramento City on February 10, 2023, the evidence credibly demonstrates that an issue of fact exists as to the proper date of service. Because Sacramento City has confirmed it received the complaint from OAH on March 14, 2023, its Notice of Insufficiency is timely filed.

Student's Issue number one states that Sacramento City failed to comply with an OAH order that Student be returned to school on September 22, 2022. OAH does not have jurisdiction to enforce compliance of its own orders. Any issue of non-compliance should be directed to the California Department of Education. As such the claim is

insufficient. Because OAH does not have jurisdiction of this issue, Issue number one is dismissed with prejudice.

Issue number two alleges that Sacramento City failed to implement Student's IEP during the 2021-2022 school year. Student also alleges that Sacramento City failed to return Student to school on January 23, 2023 pursuant to a settlement agreement with Parent. Student sufficiently pleads that Sacramento City did not implement Student's IEP for the full school year, and that a resolution sought is return of Student to school. While Sacramento City is correct the allegations are scant, they meet the sufficiency standard. Regarding Student's return to school, to the extent this allegation is part of the expedited hearing portion of the complaint, the pleading is sufficient. Accordingly, Issue number two is sufficient, and Sacramento City's motion to dismiss is denied.

Likewise, Issue number three states that Sacramento City failed to comply with its obligations under 20 U.S.C. 1415(k) by holding a manifestation hearing. Again, this issue addresses the expedited portion of the case, and is sufficiently pled. Sacramento City's motion to dismiss is also denied as to Issue number 3.

It is unclear from the complaint if the remaining allegations are additional issues or are meant for substantive background only. However, the complaint goes on to seek monetary damages, injunctive relief, punitive damages, and a finding that Sacramento City discriminated against Student. OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51) and discrimination, nor can OAH award monetary or punitive damages, or provide injunctive relief. As such, to the extent Student seeks adjudication of any of those issues or seeks remedies outside of OAH's limited jurisdiction, those claims are denied and dismissed with prejudice.

ORDER

1. Issue numbers two and three of Student's complaint are sufficient under title 20 U.S.C. section 1415(b)(7)(A)(ii).
2. Issue number one of Student's complaint is insufficiently pled under title 20 United States Code section 1415(c)(2)(D). Issue number one is also dismissed with prejudice as OAH does not have jurisdiction over enforcement of its prior orders.
3. The remaining allegations of the complaint related to monetary and punitive damages, injunctive relief and discrimination are dismissed with prejudice as OAH does not have jurisdiction over those claims.

IT IS SO ORDERED.



Brian H. Krikorian

Administrative Law Judge

Office of Administrative Hearings