

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2024041077

ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO DISMISS ISSUES

JULY 29, 2024

On May 24, 2024, Student filed an Amended Request for Due Process Hearing, referred to as an amended complaint, with the Office of Administrative Hearings, naming Clovis Unified School District. The amended complaint stated eight Issues. In pertinent part, Issue 1(k) alleged that Clovis denied Student a free appropriate public education by failing to use peer reviewed and research-based positive behavior interventions to the extent practicable to address Student's behavior. Issues 2 through 8 alleged, respectively, violations of the American with Disabilities Act 42 U.S.C. § 12132; 42 U.S.C. § 1983; 42 U.S.C. § 1985; the Bane Act, Cal. Civ. Code. § 52.1; Mandatory Statutory Duty, Cal. Gov. Code § 815.6; Battery; and Negligent Hiring, Supervision, or

Retention of Employee. The amended complaint also sought as one of its resolutions, money damages according to proof.

On July 16, 2024, Clovis filed a Motion to Dismiss alleging OAH lacks jurisdiction over Issues 2 through 8, and over the resolution of money damages. On July 18, 2024, Student filed a response, stating its non-objection to these portions of the Motion to Dismiss.

The Motion also sought to dismiss Issue 1(k) on the grounds that the complaint contained no facts to support that issue. Student's response opposed this portion of the motion, citing allegations in the amended complaint that Student contends support that issue.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," 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 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].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

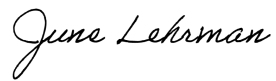
OAH does not have jurisdiction to decide claims based on violations of the American with Disabilities Act 42 U.S.C. § 12132; 42 U.S.C. § 1983; 42 U.S.C. § 1985; the Bane Act, Cal. Civ. Code. § 52.1; Mandatory Statutory Duty, Cal. Gov. Code § 815.6; Battery; and Negligent Hiring, Supervision, or Retention of Employee. Nor does OAH have jurisdiction to award money damages. The Motion to Dismiss Issues 2 through 8 and the proposed resolution of money damages is not opposed and is granted.

The Motion to Dismiss Issue 1(k) is opposed and is denied. Clovis did not file a Notice of Insufficiency within 15 days of the filing of the amended complaint, which would have been the appropriate procedure to challenge the sufficiency of the complaint's factual background statements. 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). However, 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).) Since Clovis did not do so, the amended complaint by law is deemed sufficient.

ORDER

1. Issues 2 through 8 are dismissed.
2. The proposed resolution of money damages is stricken.
3. Clovis's Motion to Dismiss Issue 1(k) is denied.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "June Lehrman".

June Lehrman

Administrative Law Judge

Office of Administrative Hearings