BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. BRENTWOOD UNION SCHOOL DISTRICT,	OAH Case No. 2018010683
BRENTWOOD UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017120966 ORDER GRANTING REQUEST FOR RECONSIDERATION; DENYING MOTIONS TO DISMISS FOR INSUFFICIENCY OR LACK OF JURISDICTION; AND DENYING MOTION IN LIMINE

On January 8, 2018, the undersigned administrative law judge issued an order finding Brentwood Union School District's due process complaint sufficient in its entirety and denying Student's motions to dismiss the complaint and vacate the expedited hearing dates. On January 22, 2018, Student filed a partial motion for reconsideration specifically as to Brentwood's expedited issue and, in the alternative, a motion in limine. Student's motions are supported by the sworn declaration of her counsel. Student asks that OAH dismiss Brentwood's complaint; vacate the expedited hearing; and order Brentwood to hold a manifestation determination review as to student's elopement behavior. At the time of issuing this Order, OAH had not received a response from Brentwood.

APPLICABLE LAW

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code,

§ 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Sufficiency of Complaints

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (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).

Title 20 of the United States Code, section 1415(k)(3) allows a local educational agency, that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, to request an expedited hearing. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested. There is no provision similar to that in title 20 United States Code, section 1415(c)(2)(A) for testing the sufficiency of a request for an expedited hearing pursuant to section 1415(k). Generally, there is insufficient time to resolve a challenge to the sufficiency of the expedited complaint. As such, the procedures to challenge the sufficiency of a complaint are not applicable to expedited proceedings. (*Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 Fed. Reg. 46728l; *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Act* (July 23, 2013) 61 IDELR 232, Question E-6.)

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 resolution of the problem 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 Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) 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.)

Grounds for Dismissal

The purpose of the IDEA 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 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.)

A school district that believes that maintaining a child in her current placement is substantially likely to result in injury to the child or others, has the right to request and receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters which must be heard within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) .) A matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing. If it is determined that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, the administrative law judge may order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days. (20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii).)

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.

DISCUSSION

Reconsideration

Student raises additional legal arguments in support of her request for partial reconsideration. Specifically, Student cites to the Office of Special Education Program's *Letter to Huefner* (2007 OSEP) 47 IDELR 228, in support of her argument that Brentwood's failure to allege any placement decision from which it is now appealing renders its expedited complaint insufficient and divests OAH of jurisdiction. Student further argues that a manifestation determination review as to the behavior forming the basis for Brentwood's determination that Student requires an interim alternative educational setting, is an implied prerequisite for filing an appeal with OAH, and consistent with OSEP's interpretation to which OAH must defer. Finally, Student contends that an educational agency can only seek an interim alternative educational setting for a student for whom it has not convened a manifestation determination review in the situation of a "special circumstance removal" based on one of the three enumerated grounds found in Title 20 of the United States Code, section 1415(k)(1)(G) [use or possession of weapons or illegal drugs, or inflicting serious bodily injury].

Accordingly, Student's request for reconsideration is Granted.

MOTION TO DISMISS FOR LACK OF SUFFICIENCY AND/OR LACK OF JURISDICTION

On reconsideration, Student has not established grounds for OAH to find Brentwood's complaint insufficient. Further, Student has not established that OAH lacks jurisdiction over Brentwood's expedited issue which seeks an order that maintaining Student's current educational placement is substantially likely to result in injury to herself or to others. The reasoning of the January 8, 2018 Order is fully incorporated herein.

In *Letter to Huefner*, OSEP addressed the issue of what decision would be subject to an educational agency's "appeal" in an agency's expedited hearing under Chapter 34 of the Code of Federal Regulations, section 300.532. OSEP clarified that a manifestation determination review, finding that a child's disciplinary behavior was a manifestation of her disability such that she should return to her educational placement, would constitute a decision to maintain her current educational placement. OSEP explained that an educational agency would "appeal" that determination if it believed such an action was substantially likely to result in injury. *Letter to Huefner* does not require dismissal of Brentwood's complaint.

Indeed, special education law does not provide for a summary judgment procedure. Brentwood has filed a request for an expedited hearing and seeks an order authorizing it to place Student in an interim alternative educational setting for up to 45 school days. Student's motion to dismiss Brentwood's complaint is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Brentwood's expedited issue is subject to proof at an evidentiary hearing, and Brentwood is entitled to proceed to hearing.

Nothing in this Order prevents Student from raising as a defense any alleged failure to convene a manifestation determination review.

Accordingly, this matter shall proceed to hearing as scheduled. Student's motion to dismiss the expedited complaint is denied.

Motion in Limine

Student seeks an order preventing Brentwood from introducing evidence of Student's elopements or of any of Student's behaviors other than the August 2017 kicking incident for which it convened a manifestation determination review. Evidentiary motions are best addressed by the hearing judge at the time of the prehearing conference or during the course of the due process hearing. As such, Student's motion in limine is denied without prejudice.

ORDER

1. Student's Motion for Reconsideration is Granted.

2. Student's Motion to Dismiss is Denied.

3. Student's Motion in Limine is Denied.

IT IS SO ORDERED.

DATE: January 26, 2018

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings