BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

WHITTIER CITY SCHOOL DISTRICT ,

OAH CASE NUMBER 2022020738

OAH CASE NUMBER 2022020111

ORDER DENYING MOTION TO COMPEL

APRIL 1, 2022

On February 22, 2022, Student and Parents, collectively, Student, filed a Due Process Hearing Request, known as a complaint, against Whittier City School District, contending, among numerous other things, that Whittier City denied Student a free appropriate public education, referred to as a FAPE, by failing to provide to Parents a copy of the December 2020 and December 2021 individualized education programs, referred to as IEPs, in their native language of Spanish. Student's complaint also alleges that the failure of Whittier City to provide Parents prior written notices in Spanish during the 2020-2021 school year and 2021-2022 school years deprived Student of a FAPE. Student's complaint contends that these failures on the part of Whittier City constituted a denial of a FAPE because they deprived Parents of their right to meaningfully

participate in the development of Student's educational program. On February 2, 2022, Whittier City filed a complaint against Student, seeking a declaration that the December 2021 IEP offered Student a FAPE in the least restrictive environment such that it could be implemented without parental consent. On February 24, 2022, the cases were consolidated.

On February 22, 2022, Student filed a Motion to Compel. The caption of the motion only referred to a "Motion to Compel Translated Copy of District's Complaint," but the body of the motion requested an order that Whittier City provide Student a copy of its complaint in Spanish, and also that Whittier City provide Student all subsequent pleadings, and "all relevant notice and IEP documents describing the actions for which it seeks consent" in Spanish." Student further contends that the case cannot proceed unless Whittier City provides copies of all of these documents in Spanish.

On February 23, 2022, Whittier City filed opposition to the motion. Whittier City contends that there is no legal requirement for a school district to provide a copy of a due process complaint in Parents' native language. Whittier City further contends that title 34, part 300.503 of the Code of Federal Regulations (2006), upon which Student relies, addresses only when a prior written notice must be given in parent's native language, and does not impose any requirement on a school district to provide a due process complaint translated into parent's native language. Additionally, Whittier City contends that title 5, section 3040, subdivision (a) of the California Code of Regulations, also relied upon by Student, does not require Whittier City to provide translated copies of IEP documents unless parents request them. Whittier City contends that Parents did not make any such request until this motion.

On February 24, 2022, Student filed a reply to Whittier' City's opposition. In the reply, Student contends that the failure of Whittier City to produce the translated

documents impairs Parents' rights to participate in the special education process and therefore constitutes unlawful discrimination against non-English speakers and culturally and linguistically diverse parents. Student also requests judicial notice of two education journal articles, a Statement of Interest filed by the U.S. Department of Justice and the U.S. Department of Education in the case of *T.R. v. The School District of Philadelphia* (E.D. Pa. 2016) 223 F.Supp. 3d 321) (*T.R.*), and a letter from the Office of Special Education Programs. Student contends these documents support its argument that there is a public policy in favor of translating important documents into the native language of parents, that the failure to do so violates several civil rights statutes, and that Whittier City's failure to provide the translated documents constitutes unlawful discrimination. Finally, Student contends that the Office of Administrative Hearings, known as OAH, would be promoting and enabling discrimination if it did not grant Student's motion.

APPLICABLE LAW AND DISCUSSION

The IDEA specifies that only certain documents must be provided in a parent's native language. These documents include prior written notices unless clearly not feasible to do so, and, if requested by a parent, IEPs. (34 C.F.R. § 300.503 (2006); Cal. Code Regs., tit. 5, § 3040, subd. (a).) The IDEA also requires that, when a parent's consent is sought, the parent must be fully informed of all information relevant to the activity for which the consent is sought, in his or her or native language, or through another form of communication. (34 C.F.R. § 300.9(a) (2006).) Notably, by their terms, whether these laws require that a document actually must be provided in a parent's native language involve questions of fact, such as feasibility in the case of prior written notices; whether the parent has requested a copy of the IEP in their native language; and whether informed consent was obtained through another form of communication.

Also notably, neither the IDEA nor the Education Code specify that a school district must provide parents copies of a due process hearing complaint or other pleadings that are customarily filed in a due process hearing in a parent's native language, and Student cited no authority that the IDEA or the Education Code contain any such specific requirement. Parents claim they were "confused" when they received Whittier City's English-language complaint. Their confusion is open to question, given that Student's counsel, who admit in the motion to compel that they have represented Student and Parents for some time, filed a notice of representation of Student and Parents with respect to Whittier City's complaint on February 4, 2022, two days after the complaint was filed. Indeed, the pleadings and papers filed by both parties reflect that they have a history of litigation with each other, and that Parents have consistently been represented by counsel in such litigation and by advocates at IEP team meetings.

Student also relies on 34 Code of Federal Regulations part 300.323(e) (2006.) That regulation provides: "Use of interpreters or other action, *as appropriate*. The public agency must take whatever action is necessary to ensure that the parent *understand the proceedings of the IEP Team meeting,* including arranging for an interpreter for parents . . .whose native language is other than English." (Emphasis added.) By its terms, this regulation involves methods to ensure non-English speaking parents understand the proceedings at IEP team meetings, and involves issues of fact as to which, or any, such methods are appropriate and necessary. It is not authority that Whittier City must be ordered to provide current pleadings, future pleadings, and the other documents that are the subject of this motion, and that the hearing cannot go forward unless Whittier City does so.

Both Student's complaint and Whittier City's complaint raise factual issues of whether Whittier City was obligated to provide certain documents to Parents, such as

IEPs and prior written notices, in Spanish. Student's complaint also raises factual issues regarding whether Whittier City's conduct in not providing such translated documents, as well as other alleged conduct, significantly impeded Parents' opportunity to participate in the decisionmaking process regarding the provision of a FAPE to Student, so as to constitute a deprivation of a FAPE. This motion, Whittier City's opposition to the motion, and Student's reply memorandum in support of this motion, all contain arguments regarding these factual disputes. As such, Student's motion constitutes a request that OAH resolve these factual disputes regarding whether Whittier City was obligated to provide the IEPs and prior written notices which are the subject of the parties' respective complaints and this motion, and whether Whittier City's failure to provide such documents significantly impeded Parents' right to participate in decisions regarding Student's educational program. The motion therefore constitutes, in effect, a motion for summary adjudication of these issues. However, special education law does not provide for motions for summary adjudication of issues or motions for summary judgment. The IDEA and the California Education Code do not set forth any procedure for deciding IDEA-related claims on the merits without first affording the parties a chance to develop a record at hearing. (20 U.S.C. § 1400 et seq.; Ed. Code, § 56501 et seq.) Whether Whittier City is obligated to provide the subject documents to Student is a matter for a due process hearing.

Further, special education law recognizes only a limited right to prehearing discovery. In this regard, the Education Code provides that a student may request his educational records be produced prior to hearing. (Ed. Code, § 56504.) The Education Code also provides that witness lists and the parties' exhibits must be exchanged by no later than five business days prior to the due process hearing. (Ed. Code, § 56505, subd. (e)(7).) There is no authority, however, that Student may, prior to hearing, move to compel production of documents translated into Parent's primary language. Student's

motion to compel production of documents translated into Spanish could be construed as an improper attempt to obtain prehearing discovery regarding whether Whittier City possessed those documents.

Finally, OAH has no jurisdiction over claims of discrimination under state or federal civil rights statutes. A party in a special education due process proceeding 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 [FAPE] 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 proposals or refusals 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.2d.1026, 10028-1029.)

As Student acknowledges in his reply memorandum in support of his motion, OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.), the Unruh Civil Rights Act (Civ. Code, § 51), or other federal or state civil rights laws. Rather, Student must present claims pertaining to discrimination—none of which are alleged in his complaint, and which, in any event, raise numerous factual issues that must be heard by a trier of fact--in an appropriate forum. In his reply papers, Student contends that certain documents of which Student requests judicial notice support claims that specified civil rights laws

obligate school districts to provide documents translated into parents' native language. Otherwise, the ability of non-English speaking and culturally and linguistically diverse parents of special education children to participate in and advocate for their children's education will be impaired, resulting in unlawful discrimination. Student's request for judicial notice of the education journal articles is denied, as Student did not demonstrate that they constituted or provided legal authority to support Student's motion or OAH's jurisdiction to grant the motion. Student's request for judicial notice of the Statement of Interest is denied, as Student did not demonstrate that such document, filed in support of the petitioners in the case of *T.R., supra*, provides legal authority to support this motion, or to support OAH's jurisdiction to grant this motion. Student's failure to demonstrate that the Statement of Interest is relevant to this motion is noteworthy, because, as Student failed to disclose, petitioners did not ultimately prevail in that case. (*T.R. v. The School Dist. of Philadelphia* (3d Cir. 2021) 4 F.4th 179.) Finally, Student requests judicial notice of a *Dear Colleagues* letter dated June 14, 2016, issued by the U.S. Department of Education, Office of Special Education Programs, referred to as OSEP. OSEP letters do not necessarily require judicial notice, as they provide information and clarification regarding the interpretation and application of the IDEA, and are thus commonly referred to by legal professionals in the special education field. This particular *Dear Colleagues* letter addressed the Statement of Interest filed in *T.R., supra.* The letter notes that the Statement of Interest involves Title VI of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act of 1974. The *Dear Colleagues* letter specifies that the Statement of Interest does not explain the requirements of the IDEA that certain documents must be translated. Instead, the *Dear Colleagues* letter states that the Statement of Interest "reiterates and clarifies" that under the civil rights laws cited, school districts have responsibilities *independent* of the IDEA to provide translated documents. The *Dear Colleagues* letter, thus, does not

provide legal support that OAH has any authority to grant this motion. In short, Student has not demonstrated that any of the documents which are the subject of Student's request for judicial notice pertain to matters over which OAH has jurisdiction, or have any relevance to the issues raised in the parties' complaints, or provide legal authority to support the granting of this motion.

In sum, Student cites no legal authority that OAH has any jurisdiction to grant this motion. Student cites no authority under the IDEA or the Education Code that the action cannot proceed unless Whittier City provides Student with translated copies of all pleadings filed or to be filed in this action, and all relevant IEP documents and notices upon which Whittier City relies. Additionally, Student's motion constitutes a motion for summary judgment or summary adjudication of issues, upon which OAH has no authority to rule. Student's motion may also be deemed a motion for pre-trial discovery, which does not fall within the limited categories of pre-hearing discovery authorized by the IDEA and the Education Code. To the extent Student's motion is based on claims of discrimination by Whittier City, OAH has no jurisdiction to rule on any such claims. Student's contention that OAH, in recognizing its limited role and adhering to its jurisdictional boundaries is the equivalent of sanctioning Whittier City's

"blatant and harmful discriminatory conduct" is sheer sophistry.

Student's motion is denied.

IT IS SO ORDERED.

Elsa Jones

Elsa H. Jones

Administrative Law Judge

Office of Administrative Hearings