BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

RIVERSIDE UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2024050245

ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING REQUEST TO REVIVE COMPLAINT

JUNE 3, 2024

On May 9, 2024, the undersigned Administrative Law Judge issued an order dismissing Riverside Unified School District's due process complaint, *sua sponte*, due to failing to allege a dispute over which the Office of Administrative Hearings, called OAH, has jurisdiction. On May 21, 2024, Riverside Unified School District, called Riverside, filed a motion for reconsideration of OAH's May 9, 2024, Order. Although Riverside served Parent via US Mail, E-Mail, and overnight mail, OAH did not receive a response from Student.

APPLICABLE LAW

OAH 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, generally within ten days. (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.)

DISCUSSION

Riverside timely offers new facts, circumstances, and law to support reconsideration. Riverside asserts that it is entitled to reconsideration because OAH's dismissal was *sua sponte* and requests an opportunity to be heard. In light of the procedural posture of this matter, the motion for reconsideration is granted.

REQUEST TO REVIVE COMPLAINT

On reconsideration, Riverside asserts that OAH has jurisdiction to hear Riverside's complaint seeking a determination that the May 17, 2023 individualized education program, called an IEP, as continued on May 22, 2023, September 5, 2023, September 26, 2023, October 9, 2023, October 17, 2023, and October 26, 2023, all collectively referred to as the 2023 Annual IEP, offers Student a free appropriate public education, called a FAPE, in the least restrictive environment. Riverside's complaint, however, alleges that Parent signed consent to the 2023 Annual IEP on December 5, 2023. Riverside asserts that Parent's signature was accompanied by a statement that Parent did not agree that the 2023 Annual IEP offers Student a free appropriate public

education in the least restrictive environment. Riverside asserts that Parent's statement of dissatisfaction with the IEP creates a judiciable dispute within OAH's jurisdiction. However, Riverside's argument is not persuasive.

Before OAH, 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.

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.]) None of these circumstances apply to Riverside's complaint in this matter.

Riverside asserts that the language of 20 U.S.C. § 1415(b)(6) confers OAH jurisdiction over its complaint because Parent claims that the 2023 Annual IEP does not offer Student a FAPE. Riverside cites *I.R. v. Los Angeles Unified School District* (9th Cir. 2015) 805 F.3d 1164 (*I.R.*), in support of its assertion that OAH has jurisdiction over cased filed by local educational agencies when parents' express dissatisfaction with the IEP but provide consent.

However, Riverside's citation of *I.R.* does not support its position. In *I.R.*, the court dealt with a disagreement about a Student's IEP, such that the parent withheld consent to the school district's offered placement. (*Ibid* at 1166.) Therefore, the school district had a valid claim to file for due process to override the parent's lack of consent. (*Ibid* at pp. 1168-1169; Cal Ed. Code §56346(f).)

Here, Riverside's complaint alleges that Parent has provided full consent to the 2023 Annual IEP. As Riverside does not allege Parent's failure to consent to a necessary part of the 2023 Annual IEP, *I.R.* does not support Riverside's argument.

Riverside also cites the unpublished opinion in *Nancy Parrett, on her own behalf and on behalf of student Tyler Parrett v. Coronado Unified School District* (S.D. Cal 2018) 2018 WL 5785285; 73 IDELR 92 (*Parrett*). However, the facts are distinguishable, and contradict Riverside's position.

In Parrett, the parent filed a discrimination claim against the school district, alleging that the school district's filing of a due process complaint against the parent was unlawful and retaliatory under Section 504 of the Rehabilitation Act of 1973. (*Ibid* at p. *2.) The school district's defense was that it was required to file for due process pursuant to Cal Ed. Code §56346(f), because the parent had not consented to certain IEP goals. (*Ibid* at p. *3.) After the school district filed the due process complaint, the

parent provided full consent to the IEP in question, and moved to dismiss the complaint because there was no longer a case or controversy between the parties. (*Ibid*. at p. *1.) A day later, the school district dismissed the due process complaint. (*Ibid*.)

Riverside fails to fully address the facts of *Parrett* in its argument, but instead asserts the district court's acceptance of the school district's defense to a Section 504 complaint as sanctioning a local educational agency's right to file for due process whenever a parent believes an IEP does not offer a FAPE. However, the Ninth Circuit has found that a parent's disagreement that an IEP provides a FAPE, or requests for a different program, does not trigger the school district's obligations under Cal Ed. Code §56346(f). (*Capistrano Unified School District v. S.W.* (9th Cir. 2021) 21 F.4th 1125, fn. 4.) Therefore, Riverside may not bring a complaint seeking a determination the 2023 Annual IEP offers a FAPE just because Parent expressed disagreement but provided consent.

Riverside's argument fails again because OAH cannot provide Riverside anything other than declaratory relief. 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. Therefore, OAH cannot provide a Riverside with purely declaratory relief if Parent fully consented to the 2023 Annual IEP.

Nevertheless, the evidence Riverside offers in support of its motion undermines its allegation that Parent provided full and unconditional consent to implement the 2023 Annual IEP. Riverside included excepts from the 2023 Annual IEP which contain several comments and notations made by Parent. These comments appear to be a mix of Parent's subjective opinions regarding the IEP, and statements regarding Parent's consent. The statements about Parent's consent are significant to the question at hand.

For example, the IEP form contains multiple places for a parent to provide varying levels of consent to eligibility for special education as well as the underlying IEP. Parent clearly initialed and checked the corresponding box acknowledging that parent "agree[d]" with the determination that Student was eligible for special education. The IEP form then included spaces for a parent to initial to indicate full consent to the contents of the IEP and to consent to the IEP with exceptions. The form then provided a space for a parent to explain the exceptions.

Parent confusingly initialed in both spaces and wrote that her consent excluded "what I noted on [the] IEP." Parent then initialed after this phrase. Parent subsequently wrote in the space below, "I do not agree this is [a] FAPE for [Student]." Parent initialed after this phrase as well. This inconsistency alone calls Parent's consent to the 2023

Annual IEP into question. However, further notations strongly suggest that Parent did not fully consent to the 2023 Annual IEP.

Parent wrote "I do not consent to this" regarding a statement that services would not be made up if Student was absent or scheduled for a day class is not in session, such as a holiday. This is not the only occasion that Parent clearly expressed a lack of consent to a portion of the IEP.

The 2023 Annual IEP included certain accommodations for statewide annual testing. At the bottom of that section, Parent wrote, "I do not agree to any of the accommodations on this page."

The 2023 Annual IEP included individual counseling services. Parent wrote next to the individual counseling services, "I agree to counseling with a qualified mental health provider[,] one who can diagnose and treat mental health needs." Parent then initialed after this entry. Thus, Parent's consent appears to be contingent upon a certain provider implementing the service. Parent also appears to have crossed out a portion of the counseling service description in the 2023 Annual IEP prior to writing that comment, possibly editing the offer of FAPE in the process.

Lastly, the 2023 Annual IEP included a section regarding the provision of services under emergency conditions. Parent wrote, "I do not consent to predetermination of services in the event of emergency." Parent then initialed after this sentence.

In addition to portions of the 2023 Annual IEP, Riverside included letters between Riverside's counsel and Student's counsel. These letters included, among other things, discussion regarding the extent to which Parent consented to the 2023 Annual IEP.

Riverside's counsel expressed his understanding that Student's counsel's letter reflected Parent's "full and unqualified consent to implementation of all parts of the [2023 Annual] IEP." Riverside's counsel then requested Student's counsel reply if his understanding was incorrect. There was no evidence provided whether Student's counsel responded. Parent did not refute these claims or otherwise respond to Riverside's motion. Parent likewise did not confirm that Parent had provided full and unconditional consent to the 2023 Annual IEP.

Taken together, it is not at all clear that Parent provided consent to the entirety of the 2023 Annual IEP without conditions or exceptions. Riverside's counsel hints at this in his declaration in support of the motion to reconsider, suggesting that the ALJ may grant relief to Riverside to override Parent's consent with conditions. Notably, Riverside's May 7, 2024, due process complaint does not raise the allegation that Parent did not fully consent to the 2023 Annual IEP, or that Parent consented with conditions such that Riverside cannot fully implement the IEP. Rather, Riverside pled that Parent provided consent to implement the 2023 Annual IEP.

The additional facts provided in Riverside's motion do not revive Riverside's May 7, 2024, complaint as pled. To do so would be to allow Riverside to improperly amend its complaint through a motion for reconsideration.

Nevertheless, nothing about this Order prevents Riverside from filing a new due process complaint alleging the facts it included in its instant motion.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi
Administrative Law Judge
Office of Administrative Hearings