BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CAMPBELL UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018110081 ORDER DENYING REQUEST TO BIFURCATE; DENYING REQUESTS FOR SANCTIONS; DENYING MOTION TO UNEXPEDITE HEARING; AND PARTIALLY DENYING REQUEST FOR DISMISSAL

On November 1, 2018, Parent on behalf of Student (Student) filed a Due Process Hearing Request (complaint) against Campbell Union High School District. That complaint was deemed to raise issues requiring an expedited hearing and non-expedited issues. As a result, on November 2, 2018, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited Prehearing Conference, Hearing and Mediation and Non-Expedited Prehearing Conference and Due Process Hearing (Scheduling Order), also noting the last day to file pre-hearing motions for each phase of the case.

On November 13, 2018, Campbell filed motions to "unexpedite" the hearing and to dismiss claims. On November 16, 2018, Campbell filed a motion to bifurcate the question of whether the expedited hearing should proceed on an expedited basis. On November 16, 2018, Student filed an opposition to the motions to unexpedite the hearing and dismiss claims. On November 19, 2018 Student filed an opposition to the motion to bifurcate the hearing.

Motion to Bifurcate

In its Motion to Bifurcate, Campbell argues that the question of whether Student, who has not been deemed eligible for special education by Campbell, is entitled to a hearing pursuant to the IDEA should be separately considered prior to proceeding with the expedited hearing out of concerns for judicial economy. Campbell requests sanctions for the filing of a manifestation determination appeal on behalf of a student who is not eligible for special education. Campbell notes that the request for bifurcation may be duplicative of its motion to unexpedite the case; however, it felt compelled to file the motion to preserve its rights in light of the deadline for pre-hearing motions. Student opposes the motion as duplicative of Campbell's motion to unexpedite the hearing and requests sanctions for the filing of the duplicative motions.

APPLICABLE LAW

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).[1]) An expedited due process hearing before OAH must occur 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) .) The statute requiring an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*)

The Office of Administrative Hearings reviews a complaint to determine whether the pleadings raise questions that require an expedited hearing pursuant to title 20 of the United States Code, section 1415 subdivision (k). When issues requiring an expedited hearing are alleged, an expedited hearing on those issues only is scheduled. Thus, all expedited hearings are automatically bifurcated. Further subdivision of a case to determine what will be the gravamen of the expedited matter does not result in any judicial economy. In fact, it results in an extra hearing. The motion to bifurcate the question of Student's entitlement to an expedited hearing is denied.

SANCTIONS

Requests for sanctions should be reserved for egregious conduct such as a frivolous claim that ignores demonstrable evidence that it lacks foundation or situations in which there is evidence of intent to harass. It is never appropriate to ask a tribunal to sanction an opposing counsel for zealously representing his or her client. Here, counsel for Campbell explained in his motion the reasoning behind the filing of the motion to bifurcate. No evidence has been presented that it was filed solely to harass Student or his counsel. Similarly counsel for Student pled allegations supporting her claim challenging the outcome of the manifestation determination hearing at issue. There is no evidence that this is a frivolous claim. When dueling motions for sanctions are filed based on the reciprocal annoyance of counsel it results in additional expenditure of the time and resources of OAH. It would be appropriate to consider whether shifting those costs to each side is justifiable. However, in this instance a caution is more suitable. Both requests for sanctions are denied. Counsel are instructed to carefully consider the basis of future requests for sanctions, filing only those for which evidence can be submitted in support of the knowingly frivolous or bad faith basis for the claims.

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[1] All subsequent references to the Code of Federal Regulations are to the 2006 version.

APPLICABLE LAW

A matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, if the student withdraws the issues in the complaint that triggered the expedited hearing, or if the student elects to challenge the change of placement under title 20, section 1415. Subdivision (b)(6)(A) and not subdivision (k). (*Molina v. Bd. Of Educ. Of Los Lunas Schools* (D.N.M. 2016) 157 F.Supp.3d 1064, 1068-1071.)

DISCUSSION

In its motion to unexpedite, Campbell asserts that Student, who is not currently deemed eligible for special education, is not entitled to an expedited hearing pursuant to the Individuals with Disabilities Act because he is a recipient of accommodations pursuant to section 504 of the Rehabilitation Act of 1973. Campbell argues that students receiving accommodations pursuant to the Rehabilitation Act of 1973 do not have the same rights as students receiving special education and related services under the IDEA. Campbell notes that Student was found ineligible for special education and related services in 2017 and further asserts that Campbell did not have a "basis of knowledge" that student was a child with a disability when the 504 manifestation determination hearing was held;, thus Student was not eligible for an expedited hearing on that basis either.

Student asserts that Campbell had a basis of knowledge that Student was a child with a disability after the 2017 and, therefore, the expedited hearing is appropriate.

Campbell's motion to unexpedite seeks a ruling on a disputed factual issue in advance of the expedited hearing. While it is true that OAH does not have jurisdiction over claims pursuant to Section 504 of the Rehabilitation Act of 1973, OAH does have jurisdiction over claims that Campbell had a basis of knowledge such that the outcome of the manifestation determination hearing held should have been different under the IDEA.. A student not yet determined to be eligible for special education can claim the IDEA's procedural protections if he alleges that the district had a basis of knowledge of his disability. (20 U.S.C. § 1415(k)(5); *A.V. by Concepcion Varela v. Panama Buena Vista Union School District* (E.D. Cal., 2018) 2018 WL 339055, p. 6.) The complaint adequately alleges facts stating such a claim. As there is no summary judgment procedure in special education, the issues pertinent to the expedited hearing shall be resolved following receipt of evidence at the expedited hearing. Once issues regarding the discipline of a student who asserts the school district had a basis of knowledge that he was a child with a disability are raised, the expedited hearing must proceed according to the statutorily mandated time frame. Accordingly, the motion to unexpedite the hearing dates must be denied.

Motion to Dismiss

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 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.)

Minimal pleading standards apply to requests for due process pursuant to the Individuals with Disabilities Education Act. (*Schaffer ex rel. Schaffer v. Weast,* (2005) 546 U.S. 49, 54 [126 S.Ct. 528, 163 L.Ed.2d 387.] All that is required in a due process hearing complaint is a description of the nature of the problem of the child related to the proposed initiation or change; including facts relating to the problem and a proposed resolution of the problem to the extent known to the party at the time of filing. (Ed. Code §56502(c)(1)(C) and (D); 20 U.S.C. § 1415 (b)(7)(B)(iii).)

Special education laws do not provide for summary judgment or summary adjudication of issues procedures. However, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction.

In this case, Campbell asks that Student's claims numbers 1, 2, 3, 7 and 8 be dismissed. Campbell argues that Claims number 1, 2 and 3 fall outside OAH's jurisdiction because they allege breach of a 2017 settlement agreement between the parties, and seek as a remedy the rescission of that agreement.. Campbell seeks rescission of Claim number 7 on the grounds that OAH does not have jurisdiction over the appeal of a manifestation determination by a student not eligible for special education and of Claim number 8 because it alleges violations of civil rights claims.

Student opposes the motion on the grounds that claims one through three allege a denial of FAPE by breach of the 2017 settlement agreement, that Campbell had a basis of knowledge Student was a child with a disability, and thus OAH does have jurisdiction to consider the appeal of the manifestation determination. Student also argues that the civil rights claims are asserted to exhaust administrative remedies.

CLAIM NUMBERS 1, 2 AND 3

Claim number one of Student's complaint alleges that "The District violated the agreement executed during the 2016-2017 school year by failing, on information and belief, to conduct an FBA by a qualified assessor with expertise in evaluating students with ADHD." The facts alleged assert that the violation of the agreement constituted a denial of a free, appropriate public education. One of the proposed remedies is rescission of the agreement.

Student's claims numbers 2 and 3 involve claims of denial of FAPE due to Campbell's breach of the settlement agreement. The settlement agreement is alleged to include a waiver of claims through the conclusion of the 2016-2017 school year. Claim number two seeks remedies for the denial of FAPE due to the violation of Campbell's child find obligations during the 2016-2017 school year . Claim number three seeks remedies for denial of FAPE due to Campbell's denial of eligibility for special education and related services during the 2016-2017 school year without sufficient evidence and without appropriate behavior intervention to address Student's maladaptive behaviors.

OAH's limited jurisdiction was defined in *Wyner v. Manhattan Beach Unified School District* (9th Cir. 2000) 223 F.3d 1026. In that case, the court defined the issue before it as whether SEHO, OAH's predecessor agency, had jurisdiction to hear issues regarding compliance with a prior order directing compliance with a settlement agreement. The Court declared that SEHO had no jurisdiction over a claim of breach of a settlement agreement that was the subject of a prior decision. The applicable time limits and procedures for an appeal to federal court applied. The Court explained that subdivision (a) of California Education Code section 56501 specified the jurisdiction of tribunals hearing special education cases in California and those areas did not include failure to comply with a prior order.

This case, however, does not allege violation of a prior order. It alleges violation of a settlement agreement resulting in a denial of FAPE. While OAH would not have jurisdiction over an allegation of a contractual violation of a settlement agreement, it does have jurisdiction over claims that violation of a settlement agreement resulted in a denial of a FAPE to Student. (*Pedraza v. Alameda Unified School District.*(9th Cir. 2017) 676 Fed Appx. 704, 707 [nonpub. opn.].)

Campbell argues that Student is unable to state a claim for denial of FAPE because the subject matter of the settlement agreement concerned only Student's 504 accommodations. However, such a determination would require a prehearing factual determinations akin to summary judgment. The content of the settlement agreement has not been established. Therefore, dismissal is premature.

Campbell also argues that OAH does not have jurisdiction over Student's proposed remedy of rescission of the settlement agreement. Determination of a remedy is undertaken after liability is determined. Whether an Administrative Law Judge's broad equitable discretion to fashion a remedy might include rescission of the contract is a different question

than jurisdiction under *Wyner, supra,* and is not a matter appropriately determined in the course of ruling on a motion to dismiss claims.

CLAIM NUMBER 7

Campbell seeks dismissal of Student's allegations in Claim number seven in which Student seeks review of the manifestation determination hearing of October 8, 2018. Campbell asserts that Student's claims cannot proceed because Student is not eligible for special education. Student argues Campbell had a basis of knowledge of Student's status as a student with a disability and thus seek review of the determination pursuant to the procedural protections of the IDEA.

The lack of a summary judgment process in special education is controlling here. This is a factual dispute. An evidentiary determination is necessary prior to such a ruling..

CLAIM NUMBER 8

In Claim number eight, Student alleges claims of civil rights violations on the theory that this is required to exhaust administrative remedies pursuant to those statutes. OAH does not have jurisdiction over claims of violation of civil rights statutes.

ORDER

1. The motion to bifurcate the expedited hearing is DENIED.

2. Both Campbell's and Student's motions for sanctions are DENIED.

3. The motion to unexpedite the hearing dates is DENIED.

4. The motion to dismiss is GRANTED IN PART and DENIED IN PART. Campbell's motion to dismiss claims number 1, 2, 3, and 7 is DENIED. Campbell's motion to dismiss claim number 8 is GRANTED.

IT IS SO ORDERED.

DATE: November 26, 2018

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Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings