BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025041265

ORDER PARTIALLY GRANTING MOTION TO DISMISS FOR LACK OF JURISDICTION

MAY 27, 2025

Student, who is represented in this matter by his Parent, filed his request for due process, called the complaint, with the Office of Administrative Hearings, called OAH, on April 29, 2025. The thirteen issues alleged in the complaint are verbatim as follows:

- Issue 1. "Has the District followed the required process of establishing good cause before issuing a Stay Away order?"
- Issue 2. "Has the District violated Title 20 Unites States Code section 1415(k), and 34 Code of Federal Regulations?"
- Issue 3. "Has the District violated California Education Code (EC) section 46120?"

- Issue 4. "Has the District denied free appropriate public education?"
- Issue 5. "Has the District failed the Student in all areas of suspected disability to determine eligibility and for special education and related services?"
- Issue 6. "Has the District failed to offer an individualized educational program that was reasonably calculated to enable the Student to make progress appropriate in light of his circumstances?"
- Issue 7. "Has the District failed to offer an appropriate educational placement?"
- Issue 8. "Has the District failed to offer appropriate services and supports for:
    a. Social;
    b. Emotional;
    c. Behavioral;
    d. Academic;
    e. Transition; and
    f. Safety?"
- Issue 9. "Has the District significantly impeded upon Parents' opportunity to participate in the decision-making process regarding provision of a FAPE for Student by refusing Parent's requests for a trained health/behavioral aide to accompany Student at school?"
- Issue 10. "Has the District failed to consistently provide speech language, physical therapy, occupational therapy, SCIA, behavior therapy and transportation services?"
- Issue 11. "Has the District failed to implement goals, and thus also failed to report on any goal progress?"

- Issue 12. "Has the District failed to ensure Parents' meaningful participation in the decision-making process?"
- Issue 13. "Has the District failed to hold an IEP team meeting within 30 days of Parents' request?"

Cupertino filed a Motion to Dismiss on May 6, 2025, based on the grounds that OAH does not have jurisdiction over any of the 13 issues alleged in Student's complaint. Cupertino contends Issues 1 and 3 are outside of OAH's jurisdiction because the allegations of those issues do not concern the IDEA. Cupertino alleges Issue 2 is outside of OAH's jurisdiction because the Complaint failed to plead that Student violated a code of conduct, was suspended or expelled, or removed from any IEP placement and moved to another placement without Parents' consent. The motion to dismiss further contends that Issues 4 through 13 are outside of OAH's jurisdiction because they are not yet ripe for adjudication based on the terms of a settlement agreement attached to the motion.

Student filed an opposition to Cupertino's motion to dismiss on May 9, 2025, based on the grounds that OAH has subject matter jurisdiction over issues 1, 2, and 3, and that issues 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 are ripe for adjudication because Student has already been harmed by Cupertino's alleged actions and omissions.

An expedited prehearing conference, called a PHC, took place on May 19, 2025. At that PHC the ALJ verbally partially granted Cupertino's motion to dismiss by dismissing only Student's Issue 1 as being outside of OAH's jurisdiction. Also, at the May 19, 2025 expedited PHC the ALJ verbally denied Cupertino's motion to dismiss Student's Issues two through 13. This written Order memorializes the ALJ's verbal ruling on Cupertino's motion to dismiss at the expedited PHC.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), called 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 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.)

ISSUE ONE IS DISMISSED FOR LACK OF JURISDICTION

Cupertino argues issue one is not a claim under the IDEA, but is a claim arising under section 504 of the Rehabilitation Act of 1973, called Section 504. OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 12101, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51). Cupertino also argues Issue one is unrelated to provision of a free appropriate public education, called a FAPE.

The complaint and Student's opposition to the motion allege Cupertino issued one or more "stay away" orders around April 23 through April 28, 2025. Student contends such "stay away" orders unlawfully prevented Parent from being on a district campus at certain times and in certain specific locations. Student's opposition notes Cupertino imposed the "stay away" order pursuant to California Penal Code, section 626.4.

California Penal Code, section 626.4, grants a chief administrator of a school campus the authority to exclude a disruptive person from the campus. It is a misdemeanor to violate a campus "stay away" order. Penal Code section 626.4 also provides that the excluded person can request an appeal of the "stay away" order by requesting a hearing in front of the campus administrative officer. Student's opposition to the motion states Parent sought a hearing with Cupertino regarding the "stay away" order imposed. Penal Code section 626.4 offers little guidance as to who, if anyone, is authorized to interfere with the decisions of school officials in connection with "stay away" orders issued by a school district. *Macias v. Filippini* (E.D.Cal., May 17, 2018, No. 1:17-CV-1251 AWI EPG) 2018 WL 2264243, at *7 [nonpub. opn.].

OAH does not have jurisdiction over a school district's process of establishing good cause for issuing a "stay away" order to a parent under California Penal Code section 626.4. Therefore, Cupertino's request to dismiss Issue one is granted.

MOTION TO DISMISS ISSUE TWO IS DENIED

Cupertino contends Student's Isue two is outside of OAH's jurisdiction because the complaint fails to allege Student violated a code of conduct or was suspended or expelled. However, that contention is not entirely correct. Even though the complaint does not allege Student violated a code of conduct, Student's complaint alleges Student

was wrongfully expelled from three classes (cooking, Stegel instruction, and one hour of the Expanded Learning Opportunities Program, called the after school program) for more than ten school days.

Since Student may be eligible for special education, Student may have rights under title 20 United States Code section 1415(k) if he is removed from his placement in excess of ten school days. It is unclear if Student's placement includes the after school program, or if his individualized education program, called an IEP, should address supports Student requires to attend the after school program. Student alleges Cupertino has failed to adhere to the requisites of 20 United States Code section 1415(k) before removing Student from three classes, including a portion of the after school program. OAH has jurisdiction over disputes arising under 20 United States Code section 1415(k). Therefore, Cupertino's motion to dismiss Issue Two for lack of jurisdiction is denied.

MOTION TO DISMISS ISSUE THREE IS DENIED

Student's Issue three asks, "Has the District violated California Education Code (EC) section 46120?" That code section addresses after school programs. Student's complaint alleges Cupertino expelled Student from multiple classes or activities without affording him rights to which he was entitled. Because Student's expulsion claim is covered by Issue two, the ALJ reads this claim as an attempt to allege a denial of FAPE because Student was not allowed to participate in some part of an afterschool program. Cupertino argues Student failed to allege the after school program was part of his IEP. However, Student alleged the portion of the after school program he was not allowed to attend was particularly important to Student's development of social skills.

Evidence may establish Student was entitled to receive certain services or supports to allow him to access the entire after school program, and that the failure to offer such supports or services as part of Student's IEP was a denial of FAPE. Student's allegations are unclear and vague, but lack of clarity or vagueness is addressed by a notice of insufficiency, not a motion to dismiss. Moreover, Cupertino's motion to dismiss does not cite authority establishing that the IDEA does not provide rights to an eligible child regarding his complete inclusion in an after school program. Thus, depending on the evidence introduced at hearing in this matter, OAH may have jurisdiction over Issue Three. Consequently, Cupertino's motion to dismiss Issue Three for lack of jurisdiction is denied.

MOTION TO DISMISS ISSUES FOUR THROUGH THIRTEEN ARE DENIED

Cupertino contends Student's issues 4 through 13 should be dismissed because they are not ripe for adjudication. Cupertino relies on the settlement agreement attached to the motion to dismiss to argue that Cupertino still has additional time to address the claims made against it in issues four to thirteen. However, the issues alleged in the complaint do not allege time periods, which is addressed in the Order Determining Due Process Complaint Partially Insufficient. Assuming Student provides the requisite specificity in his pleading, Student has a right to introduce evidence regarding whether or not Cupertino has already committed the misconduct or omissions claimed by Student in his complaint.

Cupertino's motion improperly seeks a ruling on the merits of Issues four through thirteen. Here, Cupertino's motion to dismiss is not limited to matters facially outside of OAH's jurisdiction, but instead seeks a ruling on the merits of the case based on extrinsic evidence in the form a settlement agreement. However, OAH does not have authority to grant summary judgment or summary adjudication. It cannot be

determined by looking at the current complaint if these issues fall within the scope of the settlement agreement. Evidence regarding whether or not issues four through thirteen are ripe for adjudication must be established through admissible evidence at hearing. Consequently, the motion to dismiss is denied as to Issues four through thirteen.

Accordingly, for the reasons stated above Cupertino's motion to dismiss Issue One is granted. Cupertino's motion to dismiss Issues Two through thirteen are denied.

ORDER

1. Cupertino's Motion to Dismiss is granted as to Issue One.
2. Cupertino's Motion to Dismiss is denied as to Issues Two through Thirteen.

IT IS SO ORDERED.

Christine Arden

Christine Arden
Administrative Law Judge
Office of Administrative Hearings