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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

RAUL EMMANUEL PONCE, III, and
ISRAEL ENRIQUE PONCE,

CASE NO. CV F 09-2142 LJO SMS

Plaintiffs,

**ORDER ON DEFENDANT’S MOTION TO
DISMISS (Doc. 10)**

vs.

CLOVIS UNIFIED SCHOOL DISTRICT,

Defendant.

_____ /

INTRODUCTION

Defendant Clovis Unified School District (“District”) moves to dismiss the first amended complaint (“FAC”) filed by plaintiffs Raul Emmanuel Ponce, III (“R.P.”) and Israel Enrique Ponce (“I.P.”) (collectively “plaintiffs”). Plaintiffs, minors proceeding in propria persona, assert claims pursuant to Cal. Ed. Code §56505, the Individuals with Disabilities Act, 20 U.S.C. §1415 (“IDEA”), and Section 504 of the Rehabilitation Act, 29 U.S.C. §794 (“Section 504”). In a Fed. R. Civ. P. 12(b)(6) motion, District moves to dismiss plaintiff’s FAC on grounds that the minor plaintiffs lack the capacity to sue, and plaintiffs’ non-attorney parents cannot bring an action on behalf of their children without retaining an attorney. In addition, District argues that plaintiffs fail to state a claim, and move for a more definition statement of plaintiffs’ claims pursuant to Fed. R. Civ. P. 12(e). For the following reasons, this Court GRANTS District’s motion to dismiss with leave to amend and with instructions.

BACKGROUND

Plaintiffs’ three-paragraph FAC provides little detail as to the basis of their federal and state claims. From the FAC, the Court can determine the following facts:

Plaintiffs are brothers who are District elementary school students. This action is a joint appeal of two decisions of the California Office of Administrative hearings (OAH). Plaintiffs appeal a

1 September 9, 2009 findings and decision issued by Administrative Law Judge Darrel Lepkowsky in
2 R.P.'s administrative action, and an October 19, 2009 findings and decision issued by Administrative
3 Law Judge Charles Marson in I.P.'s administrative action.

4 In the third paragraph of the complaint, plaintiffs request time to file second amended complaint
5 by February 4, 2010. The FAC is signed by Raul Ponce, Jr. and Ana Bustos-Ponce "Representatives for
6 Plaintiffs." Plaintiffs did not file a second amended complaint.

7 On February 9, 2010, District moved to dismiss plaintiffs' FAC. Plaintiffs failed to oppose this
8 motion, and District filed no reply. Having considered the FAC and District's arguments, this Court
9 finds this motion suitable for a decision without a hearing. Accordingly, this Court vacates the March
10 15, 2010 hearing on this motion pursuant to Local Rule 230(g) and issues the following order.

11 DISCUSSION

12 **Pleading And Fed. R. Civ. P. 12(b)(6) Motion Standards**

13 A motion to dismiss pursuant to Fed R. Civ. P. 12(b)(6) is a challenge to the sufficiency of the
14 pleadings set forth in the complaint. A Fed. R. Civ. P. 12(b)(6) dismissal is proper where there is either
15 a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal
16 theory." *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). In considering a motion
17 to dismiss for failure to state a claim, the court generally accepts as true the allegations of the complaint,
18 construes the pleading in the light most favorable to the party opposing the motion, and resolves all
19 doubts in the pleader's favor. *Lazy Y. Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

20 To survive a motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief
21 that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1974 (2007).
22 "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
23 the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129
24 S. Ct. 1937, 1949 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it
25 asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550
26 U.S. at 556). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability,
27 it 'stops short of the line between possibility and plausibility for entitlement to relief.'" *Id.* (quoting
28 *Twombly*, 550 U.S. at 557).

1 retaining a lawyer.” *Johns v. County of San Diego*, 114 F.3d 874, 876 (9th Cir.1997). This rule is based
2 on the common-law doctrine that a “‘non-lawyer’ has no authority to appear as an attorney for others
3 than himself.’” *Id.* (quoting *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir.1987)).
4 The doctrine is intended to protect litigants and the court from vexatious and poorly drafted claims, and
5 to ensure that litigants’ rights are advanced by individuals bound by the duties of competence and
6 professional ethics. *Collinsgru v. Palmyra Board of Education*, 161 F.3d 225, 231 (3rd Cir.1998); *see*
7 *also, Johns*, 114 F.3d at 877 (where minors have “claims that require adjudication, they are entitled to
8 trained legal assistance so their rights may be fully protected”).

9 Because plaintiffs are minors that are neither represented by a guardian ad litem or counsel, this
10 Court dismisses this action without prejudice. *Johns*, 114 F.3d at 878.

11 **Parents Do Not Appear as Litigants**

12 Although the minor plaintiffs cannot pursue their claims without representation, an adult litigant
13 may represent herself in federal court, 28 U.S.C. § 1654. Under the IDEA, the rights of parents and
14 children are indistinguishable; thus, plaintiffs’ parents may maintain an action in the parents’ names to
15 enforce the parents’ rights under the IDEA. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 532
16 (2007). Specifically, parents of disabled children are entitled to appear without attorney representation
17 to seek review in federal court of substantive rulings by state educational agencies. *D.K. ex. Rel. Kumetz-*
18 *Coleman v. Huntington Beach Union High Sch. Dist.*, 428 F. Supp. 2d. 1088, 1094 (C.D. Cal. 2006).

19 Although the parents signed the FAC as plaintiffs’ “representatives,” the parents are not named
20 as plaintiffs in this action. Based on the foregoing, the complaint must be dismissed without prejudice.

21 **Failure to State a Claim**

22 In addition to the aforementioned defects, plaintiffs have failed to state a claim under the IDEA,
23 Section 504, or Cal. Ed. Code §56505. While the notice pleading standard of Fed. R. Civ. P. 8 is liberal,
24 a plaintiff must provide the “grounds of his entitlement to relief,” which requires “more than labels and
25 conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550
26 U.S. 554,127 S. Ct. 1955, 1964-65 (internal citations omitted). A plaintiff must allege “enough facts
27 to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1974.

28 Plaintiffs’ FAC failed to allege facts to put District on notice as to the substance of their claims.

1 As to their IDEA claim, Plaintiffs fail to identify which portions of the OAH decisions plaintiffs appeal
2 and on what grounds. To state a Section 504 claim, plaintiff must allege that: “(1) he is an individual
3 with a disability; (2) he is otherwise qualified to receive the benefit; (3) he was denied the benefits of
4 the program solely by reason of his disability; and (4) the program receives federal financial assistance.”
5 *Duvall v. County of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001). In addition, a plaintiff must allege
6 “precisely which [Section] 504 regulations are at stake and why.” *Mark H. v. Lemahieu*, 513 F.3d 922,
7 924 (9th Cir. 2008). Plaintiffs FAC lacks sufficient detail and fails to give District notice as to their
8 claims. Accordingly, plaintiffs’ FAC is dismissed for failure to state a claim.

9 **CONCLUSION AND ORDER**

10 For the foregoing reasons, this Court:

- 11 1. GRANTS District’s Fed. R. Civ. P. 12(b)(6) motion to dismiss plaintiffs’ FAC on
12 grounds that minor plaintiffs may not appear as litigants without representation and
13 counsel, and the FAC fails to put District on notice as to the nature of plaintiffs’ claims;
14 and
- 15 2. GRANTS plaintiffs leave to amend the complaint. If plaintiffs choose to file a second
16 amended complaint, plaintiffs must cure the defects of this complaint **on or before April**
17 **12, 2010**. To cure the defects, plaintiffs must:
 - 18 a. comply with Local Rule 202(a) (upon “commencement of an action...by or on
19 behalf of a minor...the attorney representing the minor...shall present (1)
20 appropriate evidence of a representative for the minor or incompetent person
21 under state law or (2) a motion for the appointment of a guardian ad litem by the
22 Court.”) **or** substitute parents as plaintiffs to enforce their rights under the IDEA;
23 **and**
 - 24 b. file and serve a second amended complaint to comply with Fed. R. Civ. P. 8 that
25 states enough facts to give District notice as to plaintiffs’ claims.

26 IT IS SO ORDERED.

27 **Dated: March 10, 2010**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE