

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

A.W. by and through his mother, AMY)	Case No.: 1:17-cv-00854 DAD JLT
WRIGHT,)	
)	ORDER GRANTING PLAINTIFF’S MOTION
Plaintiff,)	TO PROCEED IN FORMA PAUPERIS
)	(Doc. 4)
v.)	
)	ORDER DIRECTING CLERK TO ISSUE
TEHACHAPI UNIFIED SCHOOL DISTRICT,)	SUMMONS AND CASE DOCUMENTS
)	
Defendant.)	ORDER DIRECTING SERVICE OF THE
)	COMPLAINT

A.W. seeks to proceed *in forma pauperis* with an action for judicial review of the administrative decision related to his IDEA claims. Pending before the Court are the complaint and the motion to proceed *in forma pauperis*. For the following reasons, the Court finds service of the complaint is appropriate.

I. Proceeding in forma pauperis

The Court may authorize the commencement of an action without prepayment of fees “by a person who submits an affidavit that includes a statement of all assets such person . . . possesses [and] that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). The Court reviewed the financial status affidavit (Doc. 4) and finds the requirements of 28 U.S.C. § 1915(a) are satisfied. Therefore, Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**.

///

1 **II. Screening Requirement**

2 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
3 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or
4 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
5 who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff’s claim
6 is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or
7 not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.
8 25, 32-33 (1992).

9 **III. Pleading Standards**

10 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
11 pleading must include a statement affirming the court’s jurisdiction, “a short and plain statement of the
12 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may
13 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a).

14 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and
15 succinct manner. *Jones v. Cmty. Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The
16 purpose of the complaint is to give the defendant fair notice of the claims against him, and the grounds
17 upon which the complaint stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The
18 Supreme Court noted,

19 Rule 8 does not require detailed factual allegations, but it demands more than an
20 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
21 labels and conclusions or a formulaic recitation of the elements of a cause of action will
not do. Nor does a complaint suffice if it tenders naked assertions devoid of further
factual enhancement.

22 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
23 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,
24 268 (9th Cir. 1982). The Court clarified further,

25 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
26 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when
the plaintiff pleads factual content that allows the court to draw the reasonable
27 inference that the defendant is liable for the misconduct alleged. [Citation]. The
plausibility standard is not akin to a “probability requirement,” but it asks for more than
28 a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint
pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of

1 the line between possibility and plausibility of ‘entitlement to relief.’
2 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
3 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal
4 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a
5 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,
6 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

7 **IV. Discussion and Analysis**

8 Plaintiff seeks review of a decision by an Administrative Law Judge finding that the defendant
9 provided a Free and Appropriate Education and to recover attorney’s fees. (Doc. 1) The Court has
10 jurisdiction over this matter. 20 U.S.C. § 1415(i)(2); 28 U.S.C. § 1367.

11 **V. Conclusion and Order**

12 Plaintiff’s complaint states a cognizable claim for review of the administrative decision denying
13 Social Security benefits. Based upon the foregoing, the Court **ORDERS**:

- 14 1. Plaintiff’s motion to proceed *in forma pauperis* (Doc. 4) is **GRANTED**;
- 15 2. The Clerk of Court is **DIRECTED** to issue summons as to the defendant, Tehachapi
16 Unified School District;
- 17 3. The Clerk of Court is **DIRECTED** to issue and serve Plaintiff with Case Documents,
18 including the Order regarding Consent, the Consent Form, and USM-285 Forms; and
- 19 4. The U.S. Marshal is **DIRECTED** to serve a copy of the complaint, summons, and this
20 order upon the defendant as directed by Plaintiff in the USM Forms.

21
22 IT IS SO ORDERED.

23 Dated: August 2, 2017

/s/ Jennifer L. Thurston
24 UNITED STATES MAGISTRATE JUDGE