

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW W., a minor residing in Menlo Park, California, by and through his guardian Timothy Walton,

Plaintiff,

v.

MENLO PARK CITY SCHOOL DISTRICT, et al.,

Defendants.

No. C-10-0292 MMC

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS SECOND CAUSE OF ACTION; GRANTING DEFENDANT’S MOTION TO STRIKE; DISMISSING SECOND CAUSE OF ACTION WITHOUT PREJUDICE; STRIKING THIRD THROUGH SIXTH CAUSES OF ACTION; STRIKING CLAIMS AGAINST OFFICE OF ADMINISTRATIVE HEARINGS

Before the Court are two motions, each filed May 24, 2010 by defendant Menlo Park City School District (“MPCSD”): (1) “Motion to Dismiss Second Cause of Action;” and (2) “Motion to Strike New Causes of Action and New Defendant Added Without Leave of Court.” Plaintiff Andrew W., through his guardian Timothy Walton, has filed opposition to each motion, to which MPCSD has replied. Having read and considered the papers filed in support of and in opposition to the motions, the Court rules as follows.¹

BACKGROUND

In his First Amended Complaint (“FAC”), plaintiff alleges he is a minor “eligible for special education because of severe autism.” (See FAC ¶ 15.) According to plaintiff, his parents “filed for due process in October 2008, because of the unilateral change [by

¹By a Clerk’s Notice filed July 7, 2010, the matter was taken under submission.

1 MPCSD] that placed [plaintiff] at a different school than his siblings” (see FAC ¶ 25), and,
2 during the “due process hearing” conducted in January 2009, plaintiff’s parents and
3 MPCSD reached a “formal settlement agreement” (see FAC ¶ 27).² Plaintiff alleges
4 MPCSD subsequently failed “in multiple ways” to comply with the settlement agreement.
5 (See FAC ¶ 31.)

6 Plaintiff also alleges that in May 2009, his parents filed a second “due process
7 request,” and that, following a September 2009 hearing before the Office of Administrative
8 Hearings (“OAH”),³ OAH issued an “improper” decision that “rejected” plaintiff’s claims.
9 (See FAC ¶ 32-35.)⁴ After OAH rendered its decision, MPCSD, according to plaintiff,
10 “unlawfully retaliated against [plaintiff] by ceasing to allow for safe transportation to and
11 from [plaintiff’s] special day class.” (See FAC ¶ 37.) Further, plaintiff alleges, he has
12 “suffered damages” as a result of MPCSD’s placing him, on a date not specified in the
13 FAC, in a “special day class,” which class plaintiff states has “an extremely limited
14 environment” and an “academic curriculum that is not specific to [the students’] grade level
15 or level of ability.” (See FAC ¶ 123.)

16 Based on the allegations set forth above, plaintiff asserts six causes of action. In the
17 First Cause of Action, brought pursuant to the Individuals with Disabilities Education Act
18 (“IDEA”) and against MPCSD and OAH, plaintiff seeks judicial review of the decision
19 rendered by OAH in September 2009. See 20 U.S.C. § 1415(i)(2)(A) (providing party
20 “aggrieved by the findings and decisions made [at due process hearing] shall have the right
21 to bring a civil action with respect to the complaint presented”). In the Second Cause of
22 Action, a state law claim for breach of contract brought against MPCSD, plaintiff alleges

23
24 ²When parents of a disabled child submit a complaint regarding the child’s education
25 to the school, “the parents or the [school] involved in such complaint shall have an
26 opportunity for an impartial due process hearing.” See 20 U.S.C. § 1415(f).

26 ³OAH is the “government agency hearing administrative disputes regarding special
27 education in California.” (See FAC ¶ 8.)

27 ⁴Although not clearly expressed in the FAC, the claims made at the due process
28 hearing conducted in September 2009 appear to be different from the claims that were
settled in January 2009.

1 MPCSD breached the terms of the settlement agreement reached in January 2009. In the
2 Third Cause of Action, brought pursuant to the Rehabilitation Act and against MPCSD,
3 plaintiff alleges MPCSD engaged in “retaliation” by “cancelling transportation services and
4 reasonable accommodations.” (See FAC ¶ 98.) In the Fourth Cause of Action, brought
5 pursuant to 42 U.S.C. § 1983 and against MPCSD and OAH, plaintiff alleges he has been
6 deprived of “equal protection” and the “procedural requirements of the IDEA.” (See FAC ¶¶
7 106-07.) In the Fifth Cause of Action, titled “Refusal to Admit Minor Resident to His
8 Neighborhood School” and brought against MPCSD and OAH, plaintiff challenges
9 MPCSD’s decision to place him at a school different from the school his siblings attend.
10 (See FAC ¶¶ 112-13.) In the Sixth Cause of Action, titled “Segregation by Improper
11 Academic Group of Students” and brought against MPCSD and OAH, plaintiff challenges
12 MPCSD’s decision to assign him to the above-described “special day class.” (See FAC
13 ¶ 123.)⁵

14 DISCUSSION

15 By the instant motions, MPCSD seeks, respectively, an order dismissing the Second
16 Cause of Action, and an order striking the Third through Sixth Causes of Action and all
17 claims alleged against OAH.⁶

18 A. Motion to Dismiss

19 By order filed April 15, 2010, the Court dismissed the Second Cause of Action, for
20 the reason that plaintiff had failed to allege his compliance with § 945.4 of the California
21 Government Code, which provides that “no suit for money or damages may be brought
22 against a public entity . . . until a written claim therefor has been presented to the public
23 entity and has been acted upon by the board, or has been deemed to have been rejected
24 by the board.” See Cal. Gov’t Code § 945.4.

25
26 ⁵Plaintiff’s complaint does not state whether his Fifth and Sixth Causes of Action
27 arise under state or federal law, nor does plaintiff allege the statute(s), if any, under which
he brings such causes of action.

28 ⁶MPCSD does not seek dismissal of the First Cause of Action to the extent it is
alleged against itself.

1 MPCSD argues the Second Cause of Action, as amended, remains subject to
2 dismissal for failure to allege compliance with § 945.4. The Court agrees.

3 Although plaintiff now alleges he presented a “claim” to MPCSD on December 18,
4 2009 (see FAC ¶ 39), plaintiff fails to allege that such “claim” included an allegation that
5 MPCSD engaged in the multiple breaches set forth in the FAC, or any of them. Further,
6 even assuming the FAC could be interpreted as alleging that each claim made in the
7 Second Cause of Action was included in the “claim” allegedly presented to MPCSD on
8 December 18, 2009, plaintiff fails to allege that said “claim” has been denied or has been
9 deemed to have been denied by MPCSD.

10 Accordingly, the Second Cause of Action is subject to dismissal.

11 **B. Motion to Strike**

12 By order filed April 20, 2010, the Court approved the parties’ stipulation, which
13 provided that “[p]laintiff will file an amended complaint addressing the issues raised in
14 [MPCSD’s] Motion to Dismiss [the initial complaint].” (See Stipulation and Order, filed April
15 20, 2010.) Thereafter, plaintiff filed his FAC, which, in addition to amending the Second
16 Cause of Action, added four new claims, specifically, the Third through Sixth Causes of
17 Action, and added a new defendant, specifically, OAH.

18 MPCSD moves to strike the new claims and new defendant on the ground that the
19 Order of April 20, 2010 did not give plaintiff leave to add new claims or a new defendant.
20 The Court again agrees. The Order of April 20, 2010 only allowed plaintiff to amend the
21 Second Cause of Action, as the adequacy of the Second Cause of Action was the sole
22 issue raised in the motion to dismiss the initial complaint.

23 In his opposition to the motion to strike, plaintiff argues that, in the interests of
24 judicial economy, the Court should grant him leave to amend at this time. The Court
25 construes plaintiff’s opposition as a belated request for leave to amend to add the Third
26 through Sixth Causes of Action and to add OAH as a defendant. In its reply, MPCSD
27 argues leave to amend would not be proper because plaintiff’s new claims would be
28 subject to dismissal. As MPCSD has had an opportunity to address plaintiff’s request for

1 leave to amend, the Court, in the interests of judicial economy, will address herein the issue
2 of whether such leave should be granted.

3 Leave to amend to add new claims is properly denied where the proposed claims
4 would be subject to dismissal. See Moore v. Kayport Packaging Express, Inc., 885 F.2d
5 531, 542 (9th Cir. 1989). As discussed below, each of plaintiff's new claims is subject to
6 dismissal, and, accordingly, leave to amend to add the new claims will not be granted.

7 First, to the extent plaintiff seeks to add OAH as an additional defendant to the First
8 Cause of Action, the First Cause of Action is subject to dismissal. Plaintiff fails to cite any
9 authority providing that, where, as here, a party seeks, under the IDEA, judicial review of a
10 decision of an administrative law judge ("ALJ"), the state agency that employs the ALJ is a
11 proper party to such cause of action. Indeed, to the extent courts have considered such a
12 claim, they have rejected it. See, e.g., B.J.S. v. State Education Dep't, 2010 WL 1172598,
13 *10 (W.D. N.Y. 2010) (holding state agency and its officer who ruled on claims in
14 administrative complaint filed against school district not proper parties to action seeking
15 judicial review of such agency's decision; stating, "[n]othing in the [IDEA] either directly or
16 implicitly suggests that by their compliance with the [IDEA's] requirement to provide
17 impartial review of an administrative complaint attacking an [individual education plan], [the
18 reviewing officer and state agency that employs him] thereby become parties to the
19 underlying dispute") (citing cases).

20 Next, the Third Cause of Action, by which plaintiff seeks to allege a claim against
21 MPCSD under the Rehabilitation Act, is subject to dismissal. The Third Cause of Action is
22 based on the allegation that, after the ALJ ruled against plaintiff in September 2009,
23 MPCSD "cancell[ed] transportation services and reasonable accommodations" (see FAC
24 ¶ 98); consequently, plaintiff must exhaust the administrative remedies available under the
25 IDEA before he can bring such a claim in district court. See Payne v. Peninsula Sch. Dist.,
26 598 F.3d 1123, 1127 (9th Cir. 2010) (holding, where plaintiff seeks relief under statute other
27 than IDEA, exhaustion of administrative remedies available under IDEA required where
28 plaintiff seeks relief for "injuries that could be redressed to any degree by the

1 IDEA’s administrative procedures”) (internal quotation and citation omitted); 20 U.S.C. §
2 1400(d)(1)(A) (providing “all children with disabilities have available to them a free
3 appropriate public education”); 20 U.S.C. §§ 1401(9), (26) (defining, for purposes of IDEA,
4 “free appropriate public education” to include “related services,” such as “transportation . . .
5 as may be required to assist a child with a disability to benefit from special education”).
6 Plaintiff does not allege he has exhausted his administrative remedies with respect to such
7 claim. Accordingly, the Court lacks jurisdiction over the Third Cause of Action. See
8 Payne, 598 F.3d at 1124-25 (affirming dismissal for lack of subject matter jurisdiction
9 where plaintiff required to, but did not, exhaust administrative remedies available under
10 IDEA).

11 The Fourth Cause of Action, by which plaintiff seeks to allege that MPCSD and OAH
12 violated 42 U.S.C. § 1983, likewise is subject to dismissal. A claim under § 1983 may not
13 be based on the theory that the plaintiff was deprived of rights under the IDEA. See
14 Blanchard v. Morton Sch. Dist., 509 F.3d 934, 938 (9th Cir. 2007) (holding Congress
15 “inten[ded] to preclude a § 1983 claim for the violation of rights under the IDEA”). Further,
16 to the extent plaintiff bases his § 1983 claim on a theory that he was deprived of equal
17 protection, plaintiff fails to allege any facts to support a finding such deprivation occurred;
18 plaintiff’s conclusory assertion that “[d]efendants violated [plaintiff’s] right to the equal
19 protection of laws” (see FAC ¶ 106), is insufficient. See Bell Atlantic Corp. v. Twombly, 550
20 U.S. 544, 555 (2007) (holding “a plaintiff’s obligation to provide the grounds of his
21 entitlement to relief requires more than labels and conclusions”) (internal quotation, citation,
22 and alteration omitted). Moreover, irrespective of plaintiff’s theory or theories of liability,
23 OAH, a state agency, is not a proper defendant to any § 1983 claim. See Will v. Michigan,
24 491 U.S. 58, 70-71 (1988) (holding claim under § 1983 cannot be brought against state
25 agency).

26 Lastly, both the Fifth Cause of Action, by which plaintiff seeks to challenge the
27 school assignment made by MPCSD, and the Sixth Cause of Action, by which plaintiff
28 seeks to challenge MPCSD’s decision to place him in a particular class, are subject to

1 dismissal. Specifically, plaintiff fails to allege he exhausted his administrative remedies
2 with respect to either claim, and, consequently, the Court lacks jurisdiction to consider such
3 claims. See Payne, 598 F.3d at 1124-25, 1127.⁷

4 **CONCLUSION**

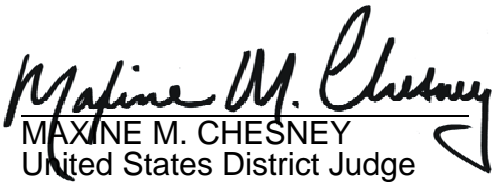
5 For the reasons stated above:

6 1. MPCSD's Motion to Dismiss Second Cause of Action is hereby GRANTED, and
7 the Second Cause of Action is hereby DISMISSED without prejudice; and

8 2. MPCSD's Motion to Strike New Causes of Action and New Defendant Added
9 Without Leave of Court is hereby GRANTED; the Third through Sixth Causes of Action are
10 hereby STRICKEN, and plaintiff's claims against the Office of Administrative Hearings are
11 hereby STRICKEN.

12 **IT IS SO ORDERED.**

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14 Dated: July 29, 2010

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16 MAXINE M. CHESNEY
17 United States District Judge

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⁷The Fifth Cause of Action is based on a claim plaintiff alleges he settled in January
25 2009. (See FAC ¶¶ 25-27, 112-13.) Because plaintiff does not allege there exists any
26 basis to set aside the settlement agreement, and, indeed, seeks to enforce such
27 agreement in his Second Cause of Action, the Fifth Cause of Action is subject to dismissal
28 for this additional reason. See MWS Wire Industries, Inc. v. California Fine Wire Co., 797
F.2d 799, 802 (9th Cir. 1986) (applying California law; holding, in absence of "showing of
fraud or undue influence," settlement is "decisive of the rights of the parties thereto and
operates as a bar to the reopening of the original controversy") (internal quotation and
citation omitted).