BEFORE THE IDAHO STATE DEPARTMENT OF EDUCATION
(Administrative Hearing)

IN THE MATTER OF THE DUE PROCESS HEARING REQUEST [redacted] parent of [redacted], a minor Petitioner. v. Compass Charter #455, Respondent.	)	No: H-21-05-24b Order to Vacate; Memorandum Decision and Order re: Respondent's Motion to Dismiss

INTRODUCTION

This is an administrative proceeding under the Individuals with Disabilities in Education Act (IDEA). The petitioner is the parent (Petitioner) of a [redacted] grade student (Student) who had previously attended respondent Compass Charter School #455 (Respondent). Petitioner contends in the Due Process Hearing Request that Respondent violated the IDEA and denied Student a Free and Appropriate Public Education (FAPE). Specifically, Petitioner contends that Respondent failed to implement Child Find policies, failed to refer Student for an evaluation despite evidence that Student suffered from a learning disability, and failed to evaluate Student when requested.

Petitioner filed an administrative complaint requesting that Respondent (1) provide training for school personnel regarding the IDEA, section 504 of the Rehabilitation Act, Child Find obligations, the American with Disabilities Act Amendments of 2008, and referenced Dear Colleague letters; (2) change school policy to allow accommodations such as reduced workload and modified assignments when warranted for disabled students; (3) accept Student's completed work for English 9B and an adjustment to Student's grade; (4) provide a letter of support for an appeal to the College of Western Idaho to either change Student's grade or drop Student's dual credit Spanish class from Student's transcript; and (5) reimburse Petitioner's lost wages totaling $8400 due to Petitioner's stopping working in order to homeschool Student.

On June 7, 2021, the parties participated in a mediation and successfully resolved all issues except for Petitioner's request for monetary damages in the form of lost wages in the amount of $2800 per year for three years totaling $8400, due to Petitioner's decision to stop working and homeschool Student. It appears that Petitioner is seeking retrospective and prospective monetary damages. Petitioner's request for monetary damages in the form of lost wages is the exclusive issue to be decided in these administrative proceedings.

The parties have waived in writing the timeline of 34 C.F.R. § 300.515 for the Hearing Officer's decision.

The parties participated in a telephonic prehearing scheduling conference on June 14, 2021, at which time the parties stipulated to a timeline for prehearing motions with responsive memoranda to cross motions for summary judgment due on July 23, 2021. Respondent submitted an Answer to the Complaint denying Petitioner's claims on June 25, 2021, and filed a Motion to Dismiss on July 9, 2021, consistent with the dates set forth in the Pretrial Order. Pursuant to the stipulated dates set forth by the parties, a Memorandum and Order regarding Respondent's Motion to Dismiss was entered, granting Respondent's Motion to Dismiss. Later the same evening, Petitioner emailed Respondent and this Hearing Officer stating that she was "unaware of the time specified to file a response" and included as an attachment her Response to Respondent's Motion to Dismiss. The Hearing Officer received the Response after the close of business on July 23, 2021 and after the Order to Dismiss was granted, but nevertheless, received it.

On July 27, 2021, counsel for Respondent contacted all parties via email to inquire as to the status of these proceedings given the procedural anomaly. In light of the responsibility and authority invested in this Hearing Officer, as well as the fact that Petitioner is pro se and the proceedings have been conducted remotely, telephonically, and via email, it is the decision of this Hearing Officer *sua sponte* to vacate the Order to Dismiss dated July 23, 2021, and to consider Petitioner's Response to Respondent's Motion to Dismiss in the interest of justice.

The Administrative Record is identified in the Transmittal of the Record. This Memorandum Decision constitutes the Hearing Officer's Conclusion of Law and Decision.

PREHEARING MOTIONS

Pending is Respondent's Motion to Dismiss for Failure to State a Claim in which Respondent seeks dismissal of the single remaining claim raised by Petitioner. Having carefully considered the record, the Hearing Officer enters the following Memorandum Decision and Order.

LEGAL STANDARD

The IDEA does not provide an administrative framework for prehearing practice, deferring to state administrative practice and procedure. The Idaho State Board of Education has adopted rules which address the IDEA Due Process Hearing procedures:

> Due process hearings shall be conducted pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Individuals with Disabilities Act (IDEA) requirements, and the Idaho Special Education Manual. In case of conflict between IDAPA 04.11.01, and IDEA, the IDEA shall supersede the IDAPA 04.11.01, and the IDAPA 04.11.01 shall supersede the Idaho Special Education Manual.

The Idaho Administrative Procedure Act permits dispositive prehearing motions including a Motion to Dismiss. IDAPA 04.11.01.304, IDAPA 04.11.01.510, and IDAPA 04.11.01.565. There is no conflict with the IDEA.

The standard for determining a Motion to Dismiss in an administrative proceeding is identical to that set forth in the Idaho Rules of Civil Procedure (I.R.C.P.) 12(b)(6) which allows for dismissal when there is a "failure to state a claim upon which relief can be granted." A Motion to Dismiss is granted if the complaint fails to allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007.) "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standards is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009.) The Court "must take all of the factual allegations in the complaint as true," but it is "not bound to accept as true a legal conclusion couched as a factual allegation." *Id.* at 678; *see also Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008.) Therefore, "conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *Caviness v. Horizon Comm. Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010) (citation omitted).

A dismissal without leave to amend is improper unless it is beyond doubt that the complaint "could not be saved by any amendment." *Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009.) Furthermore, a pro se complaint is "to be liberally construed" and "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *See Erikson v. Pardus,* 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble,* 429 U.S. 97, 106 (1976) and citing the Fed. R. Civ. P. 8(f)'s, now 8(e)'s mandate to construe pleadings so as to do justice.) After *Twombly* and *Iqbal*, a court's "obligation remains, 'where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.'" *Hebbe v. Pliler,* 627 F.3d 338, 342 (9th Cir. 2010) (quoting *Bretz v. Kelman,* 773 F.2d 1026, 1027 n. 1 (9th Cir. 1985) (en banc)).

Petitioner as the party bringing the Request for the Due Process Hearing bears the burden of proof to prevail in this matter. *Schaffer v. Weast,* 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005).

DISCUSSION

I. Availability of Lost Wages as a Remedy under the IDEA

Petitioner's sole remaining claim under the IDEA and the subject of these proceedings is for monetary damages in the form of retrospective and prospective lost wages due to quitting her job to homeschool Student; therefore, the first question to be decided is whether this remedy is available under the IDEA. For the reasons set forth below, the remedy of monetary damages in

the form of lost wages is unavailable under the IDEA, and Petitioner is not entitled to this form of relief.

As it pertains to providing a remedy to an aggrieved party, the IDEA allows courts to grant "such relief as the court determines is appropriate," 20 U.S.C. § 1415(i)(2)(B)(iii), but ordinarily monetary damages are not available under the statute. As noted in *Mountain View-Los Altos Union High Sch. Dist. v. Sharron B. H.*, 709 F.2d 28, 30 (9th Cir. 1983):

> [T]he wording of the statute does not disclose a congressional intent to provide a damage remedy. The statute does confer on district courts the power to give all "appropriate relief," 20 U.S.C. § 1415(e)(2), but absent legislative history suggesting the contrary, such a phrase is usually construed as a mere grant of jurisdiction to enforce and supplement the administrative procedures for identification, evaluation, and placement of the child, and not of authority to award retrospective damages. See also *Taylor v. Honig*, 910 F.2d 627, 628 (9th Cir. 1990) (stating that "injunctive or other prospective relief is ordinarily the remedy under the [predecessor to the IDEA] and damages are usually inappropriate"); *Charlie F. v. Board of Educ.*, 98 F.3d 989, 991 (7th Cir. 1996) (holding "that damages are not 'relief that is available under' the IDEA").

Petitioner alleges the family suffered financially because Respondent was unwilling to follow federal law, and this caused Petitioner to stop working to be Student's homeschool teacher after Student was administratively withdrawn. The complaint is otherwise void of any facts regarding Petitioner's employment outside of this assertion. Petitioner further alleges that after Student failed two §classes, she decided to stop working so she could homeschool Student. In the Motion to Dismiss, Respondent touches upon the narrow circumstances when a form of monetary damages may be available under the IDEA. Focusing on §1412(a)(10)(B)(i), Respondent correctly argues that a homeschool student is a nonpublic student, as well as the fact that a homeschool placement is not considered a private school placement, and therefore is ineligible for private placement reimbursement under §1412(a)(10)(B)(i). But the argument is in fact, unnecessary. In her Reply, Petitioner argues that Student has never been a private school nor nonpublic school student, rendering this section of the IDEA wholly inapplicable; instead, Petitioner clarified that Student is enrolled at [redacted] which partners with Idaho Home Learning Academy to provide a public education in a home setting. It is clear that Petitioner uses the word "homeschool" to describe the physical setting of Student's education while Respondent attached the IDEA's legal definition of the word "homeschool." Irrespective of either party's definition of the word "homeschool," any further discussion is moot, since the requested remedy is for lost wages.

Ultimately, even when taking all factual allegations alleged in the Complaint as true, monetary damages in the form of lost wages are not "relief that is available under" the IDEA. Petitioner did argue in her Reply that the remedy was reimbursement for educational costs, but rebranding retrospective and prospective lost wages as a reimbursement does not alter the true nature of the remedy, nor its availability under the IDEA. Lost wages do not qualify as a reimbursement for educational cost because a parent chooses to enroll a student in a public school program instituted in a remote or home setting. All educational issues already have been resolved to the parties' mutual satisfaction through mediation, and because Petitioner is not "seeking relief that

is also available" under the IDEA, 20 U.S.C. § 1415(l), and there is no plausibility of Petitoner's success in these proceedings, the Motion to Dismiss must be granted.

II. Propriety of Motion to Dismiss without Leave to Amend

In light of Petitioner pro se status, a brief explanation is merited as to why a Motion to Dismiss without leave to amend is proper. As previously mentioned, a dismissal without leave to amend is improper unless it is beyond doubt that the complaint "could not be saved by any amendment." *Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009.) In these proceedings, it is beyond doubt that no further amendment could save the complaint. Petitioner's lengthy Reply included both additional facts and legal arguments, tantamount to what can be considered an amended complaint; as she is pro se, the standard to which she is held is that of a non-attorney, and her Reply was considered fully. Nonetheless, the narrow nature of the subject of these proceedings is such that no amended complaint will change the unavailability of lost wages as a remedy. Therefore, a dismissal with prejudice is appropriate.

CONCLUSION and ORDER

The Memorandum Decision and Order dated July 23, 2021 is hereby vacated; for the reasons stated, Petitioner's Complaint as it relates exclusively to monetary damages in the form of lost wages does not state a claim for which a remedy can be granted under the IDEA, and Respondent's Motion to Dismiss is hereby GRANTED with prejudice. These proceedings will not address the underlying merits of arguments regarding homeschool and private school placement and reimbursements under IDEA.

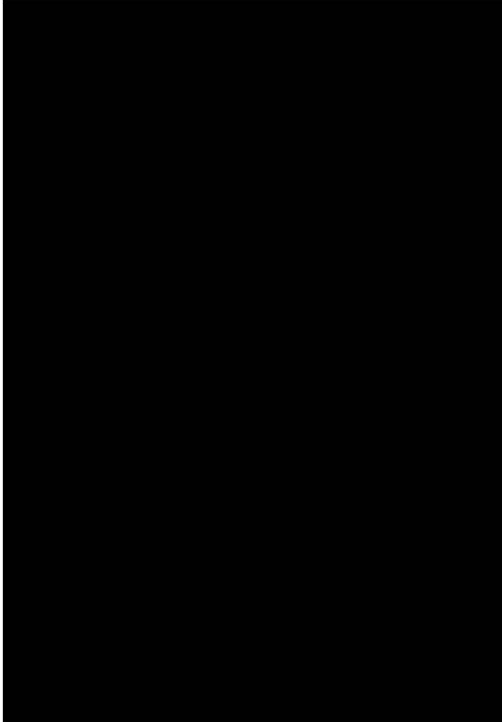
Dated this 29th day of July, 2021.

/Courtney Sidonia Wucetich/

Courtney Sidonia Wucetich

Hearing Officer

Order to Vacate; Memorandum Decision and Order Notice emailed 7/29/2021 to:



Notice

Any party aggrieved by the findings and decision herein has the right to bring a civil action with respect to the due process complain notice requesting a due process hearing under 20 U.S.C. § 1415(i)(2)(A). The action may be brought in any State court of compentent jurisdiction or ina. Distrct court of the United States without regard to the amount in controversy. See 20 U.S.C. § 1415(i)(2)(A).

20 U.S.C. § 1415(i)(2)(B) provides that: "The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, ***if the State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows.***" (emphasis added.)

IDAPA 08.02.03.109.05(g) provides that "An appeal to civli court must be filed **within forty-two (42) calendar days** from the date of issuance of the hearing officer's decision. (emphasis added).