UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

COMPTON UNIFIED SCHOOL DISTRICT, Plaintiff, v. STARVENA ADDISON, et al., Defendant(s).	CASE NO. CV 06-4717 AHM (PJWx) ORDER GRANTING JUDGMENT ON THE PLEADINGS

I. INTRODUCTION

Plaintiff Compton Unified School District ("CUSD") is a public school district duly organized and existing under the laws of the State of California. Defendants are a student ("Student") and her mother, Gloria Allen, who initiated a due process hearing before an Administrative Law Judge ("ALJ") for the State of California Office of Administrative Hearings, alleging that Student was denied her right to a Free and Appropriate Education ("FAPE") as required under the federal Individuals with Disabilities Education Act ("IDEA").

From March 21-24, 2006, the ALJ conducted a due process hearing to consider the IDEA issues raised by the student and her mother. One of their complaints was that from November 28, 2002 through January 26, 2005, CUSD failed to meet its obligation to identify Student's disabilities and to provide an educational program to address those needs. That was the first issue that the ALJ addressed. (*See*

In the matter of Student v. Compton Unified Sch. Dist., OAH No. N2005110837), Defs. Mot., Ex. A ("Decision") at 2).[1] On April 27, 2006, the ALJ ruled that beginning in the fall of 2003, CUSD had in fact violated its obligation to identify Student as someone requiring special services and did not assess or provide services to Student, in violation of the IDEA. (*Id.* at 17-20). The ALJ also ruled in favor of Student on several other issues and awarded her compensatory educational services. (*Id.* at 18-23).

On July 27, 2006, CUSD filed its complaint in this Court, appealing only one issue: whether the ALJ correctly determined that she had jurisdiction to consider whether CUSD's failure to identify Student's disabilities is a violation of the IDEA. CUSD alleges that the IDEA does not require or authorize a due process hearing or impose liability based on a school district's negligent failure to timely identify a student as eligible for special educational services under the IDEA. CUSD does not challenge any other part of the ALJ's decision. Student and her mother do not challenge any portion of the ALJ's decision.

On March 20, 2007, Student and her mother filed this motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). For the following reasons, I GRANT Defendants' motion.

II. FACTUAL BACKGROUND

The parties are familiar with the facts of this case and the Court need not set forth the details here. A comprehensive description of the factual and procedural background is set forth in the ALJ's decision. (*See* Decision at 2-12).

[1] The ALJ characterized this issue as follows:

> In this proceeding, Student alleges that the District did not meet its child-find obligations from November 28, 2002, until January 26, 2005, by failing to earlier identify her as eligible for special education as a student with an SLD [Special Learning Disability] or an emotional disturbance.

(Decision at 2).

In essence, the ALJ found that in Student's ninth-grade school year (2002-2003), she received four "Ds" in core academic courses, and two "Cs" (in chorus and physical education), but presented no conduct sufficient to alert the District that she had special education needs. (Decision at 4-5). In the fall of her tenth-grade year (2003-2004), however, Student received "Fs" in every academic subject and certain of her teachers found that she "did not 'get it';" "was 'like a stick of furniture';" colored with crayons and played with dolls rather than doing her work; and needed psychological help. (*Id.* at 5-6). Her counselor "knew or had reason to suspect that Student . . . required a referral for assessment." (*Id.* at 6). The counselor contacted her mother, who expressed reluctance to have Student "looked at," and he decided not to convene a Student Study Team. (*Id.*). Nor did he explain the range of interventions or services available to Student. (*Id*.).

Later, Student's counselor learned that she had urinated on herself in a classroom, and she was referred to a mental health services provider. (*Id.*). In April 2004 the provider recommended that Student receive tutoring and have an IEP to assess for learning disabilities. (*Id.* at 6). Despite receiving counseling services from this mental health services provider, Student again performed below the first percentile on standardized tests, received failing grades in her academic subjects and failed the California High School Exit Examination. (*Id.* at 6-7). Yet CUSD did not refer Student for assessment or otherwise explain the range of possible interventions to Student or her mother. (*Id.* at 6). Instead, it promoted her to the eleventh grade. (*Id.*).

Only after Student's mother submitted a written request for an Individualized Education Plan ("IEP") evaluation did the District initiate a psycho-social assessment of Student. (*Id.* at 7). The District's psychologist who performed the assessment recommended that Student be further assessed by the Department of Mental Health. (*Id.* at 9). As of April 2, 2007, Student had not been referred for further assessment. (*Id.* at 10).

Student's IEP team convened a meeting in January 2005 and concluded that Student had a special learning disability ("SLD") and developed an IEP providing Student with special educational services. (*Id.* at 9-10). Student began receiving such services in the spring term of her eleventh-grade year. (*Id.* at 10). Student was denied those services at the beginning of her twelfth-grade school year (2005-2006), when her name was mistakenly removed from the Resource Specialist Program ("RSP") list. (*Id.* at 11). She was not placed back in the RSP program until the beginning of October, 2005. (*Id.* at 11).

On January 31, 2006, the IEP team met again for Student's annual review. (*Id.* at 12). The IEP team found that Student continued to be eligible for special education as a student with a SLD. (*Id.*). All the same goals and objectives from the previous year were continued because those goals had not been met. (*Id.*). As of January 31, 2006, Student was forty credits shy of completing credits necessary to graduate in June 2006 with her classmates. (*Id.*).

III. THE IDEA AND APPLICABLE REGULATIONS

Miller v. San Mateo-Foster City Unified Sch. Dist., 318 F.Supp. 2d 851, 853-54, (N.D. Cal. 2004) pithily summarized the language, purpose and history of the IDEA and federal and state implementing regulations, as follows:

> Congress passed the IDEA "to assure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs ...." 20 U.S.C. § 1400(c).
>
> If a State provides every qualified child with a free appropriate public education ("FAPE") under federal statutory requirements, the IDEA provides that State with federal funds to help educate children with disabilities. In exchange for these federal funds, the State must comply with "Child Find," which requires the State to design a program to

identify and provide services to children with special education needs. 20 U.S.C. § 1412(a)(3) . . . .

California maintains a policy of complying with IDEA requirements. *See, e.g.*, Cal. Educ. Code §§ 56000, 56100(I), 56128 . . . . It implements the Child Find program by requiring local school districts to identify disabled students by "actively and systematically seeking out all individuals with exceptional needs." Cal. Educ.Code § 56300 . . . Individualized education plans ("IEPs") are required for disabled students. 20 U.S.C. § 1414(d); Cal. Educ.Code § 56344. *See also Hacienda La Puente Unified School Dist. v. Honig*, 976 F.2d 487, 491 (9th Cir.1992).

In addition to its substantive requirements, the IDEA provides procedural safeguards. Some violations of these procedural safeguards may prevent a child from receiving a FAPE. Among the most important procedural safeguards are those that protect parents' rights to be involved in the development of their child's IEP. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir.2001). In addition to the procedural right to participate in the development of an IEP, parents have the right to "present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of [a FAPE] to such child." 20 U.S.C. § 1415(b)(1)(E). After making such a complaint, parents are entitled to "an impartial due process hearing ... conducted by the State educational agency or by the local educational agency or an intermediate educational unit, as determined by State law or by the State educational agency." 20 U.S.C. § 1415(b)(2). If either party is dissatisfied with the state educational agency's review, that party may bring a civil action in state or federal court. 20 U.S.C. §

1415(e)(2). California has implemented the mandated procedural safeguards in California Education Code sections 56500 through 56507.

IV. STANDARDS OF REVIEW

A. Motion for Judgment on the Pleadings

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. Fed. R. Civ. P. 12(c). The standard applied on a Rule 12(c) motion is essentially the same as that applied on Rule 12(b)(6) motions; a judgment on the pleadings is appropriate when, even if all the allegations in the complaint are true, the moving party is entitled to judgment as a matter of law. *Westlands Water District v. Firebaugh Canal*, 10 F.3d 667, 670 (9th Cir. 1993); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F2d 1542, 1550 (9th Cir. 1989). In other words, dismissal is proper where "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Moore v. City of Costa Mesa*, 886 F.2d 260, 262 (9th Cir. 1989) (employing *Conley v. Gibson* standard). When determining a motion for judgment on the pleadings, the Court should assume the allegations in the Complaint to be true and construe them in the light most favorable to the plaintiff, and the movant must clearly establish that no material issue of fact remains to be resolved. *McGlinchey v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988). However, "conclusory allegations without more are insufficient to defeat a motion [for judgment on the pleadings]." *Id.*

As with Rule 12(b)(6) motions, "[g]enerally, a district court may not consider any material beyond the pleadings[.] . . . However, material which is properly submitted as part of the complaint may be considered." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted); William W Schwarzer, et al., California Practice Guide: Federal Civil Procedure Before Trial ' 9:339.1 (2005). Similarly, "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically

attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss[,]" or on a Rule 12(c) motion, without converting the motion into a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) (*citing Romani v. Shearson Lehman Hutton*, 929 F.2d 875, 879 n. 3 (1st Cir. 1991)). If the documents are not physically attached to the complaint, they may be considered if their "authenticity . . . is not contested" and "the plaintiff's complaint necessarily relies" on them. *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998). "The district court will not accept as true pleading allegations that are contradicted by facts that can be judicially noticed or by other allegations or exhibits attached to or incorporated in the pleading." 5C Wright & Miller, *Fed. Prac. and Pro.* § 1363 (3d ed. 2004).

B. Judicial Review of IDEA Claims

In *Miller*, Judge Patel also succinctly summarized the standard of review of an IDEA claim, which this Court adopts in full:

> The IDEA provides that a party aggrieved by the findings and decision made in a state administrative due process hearing has the right to bring an original civil action in a state court of competent jurisdiction or in federal district court in order to secure review of the disputed findings and decision. *See* 20 U.S.C. § 1415(i)(2). The party challenging the decision bears the burden of persuasion on its claim. *Clyde K. v. Puyallup Sch. Dist.*, No. 3, 35 F.3d 1396, 1399 (9th Cir.1994). The statute provides "the court shall receive the records of the administrative proceedings; shall hear additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." Id. at § 1415(i)(2)(B).
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> Judicial review of state administrative proceedings under the IDEA is less deferential than the review of other agency actions. *Ojai Unified School District v. Jackson*, 4 F.3d 1467, 1471 (9th Cir.1993). However,

"because Congress intended states to have the primary responsibility for formulating each individual child's education, [courts] must defer to their 'specialized knowledge and experience' by giving 'due weight' to the decisions of the states' administrative bodies." *Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.*, 267 F.3d 877, 888 (9th Cir.2001) (quoting in part *Bd. of Educ. of Hendrick Hudson Central Sch. Dist., Westchester County v.* Rowley, 458 U.S. 176, 206-08 (1982)). This review requires the district court to carefully consider the administrative agency's findings. *Susan N. v. Wilson Sch. Dist.*, 70 F.3d 751, 758 (3rd Cir.1995). "The amount of deference accorded the hearing officer's findings increases where they are thorough and careful." *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 891 (9th Cir.1995). After such consideration, "the court is free to accept or reject the findings in part or in whole." *Susan N.*, 70 F.3d at 758. When the court has before it all the evidence regarding the disputed issues, it may make a final judgment in what "is not a true summary judgment procedure [but] a bench trial based on a stipulated record." *Ojai*, 4 F.3d at 1472.

Miller, 318 F.Supp. 2d at 858-859 (footnote omitted).

V. ANALYSIS

A. The ALJ's Child-Find Determinations

The relevant factual findings that the ALJ made concerning the child-find obligation are set forth above. (*See* Part II, *supra*; *see also*, Decision at 2-12). In deciding the legal consequences of what she found to be CUSD's failure to timely assess Student, the ALJ cited the following authorities and principles :

> 4. The IDEA and State special education law impose upon each school district the duty to actively and systematically identify, locate, and assess all children with disabilities who require special education and related services. (20 U.S.C. §

1412; 34 C.F.R. § 300.125; Cal. Educ. Code §§ 56300, 56301.) The obligation set forth in this statutory scheme is often referred to as the "child-find" or "seek and serve" obligation. This obligation to identify, locate, and assess applies to "children who are suspected of being a child with a disability . . . and in need of special education, even though they are advancing from grade to grade." (34 C.F.R. § 300.125, subd. (a)(2).) The comments to 34 C.F.R. section 300.300, subdivision (a)(2), note the "crucial role that an effective child-find system plays as part of a State's obligation of ensuring that FAPE is available to all children with disabilities." (68 Federal Register no. 48 (March 12, 1999) at p. 12573.)

5. Under State special education law, the school district must establish written policies and procedures for a continuous child-find system. (Cal. Educ. Code § 56301.) The policies and procedures must include written notification to all parents of their rights and the procedure for initiating a referral for assessment. (*Id.*) Identification procedures shall include "systematic methods of utilizing referrals of students from teachers, parents, agencies, appropriate professional persons, and members of the public," and shall be coordinated with school site procedures for referral of pupils with needs that cannot be met with modification of the regular education program. (Cal. Educ. Code § 56302.) . . ..

The ALJ went on to hold:

The child-find issue is a cognizable claim. The District failed its obligations from the fall of 2003, through January 26, 2005, when it first

> determined Student was eligible for special education and related services. The District knew or had reason to know that Student was eligible for special education services either as a student with a specific learning disability or under the category of emotional disturbance. *Id.*, Issue 1, p.17.
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> . . . Child-find obligations . . . are a precursor to a school district's responsibility to offer and provide a disabled student with a FAPE. Thus, contrary to the District's assertion, a school district's duty to identify a child who is in need of assessment to determine eligibility for special education services is a cognizable claim for this due process hearing and is fairly subsumed within California Education Code section 56501, subdivisions (a)(1) and (2). (*See Grant Miller v. San Mateo-Foster City Unified School District*, 318 F.Supp. 2d 851 (N.D. Cal. 2004)). *Id.*, ¶ 23.

B. CUSD'S Contentions Re "Child Find" and Due Process Hearings

CUSD states that it "agrees wholeheartedly that the IDEA requires that states and local school districts actively seek out and locate students who are disabled." (Opp. at 22). Moreover, CUSD does not dispute the clear right of parents to bring a due process complaint to challenge the denial of rights afforded by the IDEA. CUSD does contend, however, that "not every charge under the IDEA is included as a claim available for due process under the due process hearing procedures of the IDEA." (*Id.*). CUSD further argues that Student's allegation that CUSD failed to discharge its obligation under the IDEA child-find provision is the type of complaint that is "not available for due process" because the District's failure to assess her for eligibility for SLD services was attributable to neglect, rather than a refusal to act. **(***Id.* at 2; *passim***)**.

Except for claiming support from the recent Supreme Court decision in *Arlington Cent. School Dist. Bd. of Educ. v. Murphy*, ___ U.S. ___, 126 S.Ct. 2455

(2006), which I will address *infra*, CUSD primarily relies on federal and state statutes and regulations. First, it notes that the IDEA itself provides that the procedures a state must establish "to ensure that children with disabilities and their parents are guaranteed procedural safeguards" (20 U.S.C. § 1415(a)) shall include:

> (b)(3) Written prior notice to the parents of the child in accordance with subsection (C)(1) . . . whenever the local educational agency - -
>
> (A) *proposes* to initiate or change; or
>
> (B) *refuses* to initiate or change, the identification, evaluation or educational placement of the child, or the provision of a [FAPE]."

20 U.S.C. § 1415 (b)(3) (emphasis added). (Opp. at 3-5).

Next, CUSD notes that 34 C.F.R. § 300.503, concerning the "prior notice" that educational agencies shall provide to parents and students, also refers to "proposals" or "refusals" to initiate or change the "identification, evaluation or educational placement" of the child. (*Id.* at 4-5).

Next, CUSD points to 34 C.F.R. § 300.507, concerning the filing of a due process complaint, which "nowhere mentions any of the child find sections cited by the ALJ as being the proper subjects of due process." (*Id.* at 22).

Finally, the CUSD notes that although the ALJ cited California Education Code section 56501(a)(1)(2), that section merely contains "language mirroring 34 C.F.R. section 507."[2] (*Id.* at 7).

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[2] Section 56501 provides, in relevant part that:

> (a) The parent or guardian and the public education agency involved may initiate the due process hearing procedures prescribed by this chapter under any of the following circumstances:
> (1) There is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.
> (2) There is a refusal to initiate or change the identification,

Fairly summarized, then, CUSD's fundamental argument is that if the federal government and the State of California intended to afford parents the right to a due process hearing for a school district's failure to discharge its child-find duties–which CUSD characterizes as "negligence" or "educational malpractice"–their respective statutes would have said so explicitly, by adding the word "neglects" to the words "proposes" and "refuses."

CUSD's fundamental contention conflicts with the clear language of the IDEA and federal regulations, is not supported by applicable case law and would lead to the illogical and unjust conclusion that Student and her mother have a recognized right under the IDEA but no means to enforce (and, ultimately, no remedy for) violations of that right. I reject CUSD's challenge and uphold the ALJ's conclusion, for the following reasons.

C. Governing Statutes and Regulations

First, and most significantly, the IDEA, federal regulations, and California law expressly contemplate that in a due process complaint a parent may raise issues relating to the identification of a student as eligible for special services.

- The IDEA requires school districts to establish policies and procedures "*identif[ying]*, locat[ing] and evaluat[ing]" children with disabilities. 20 U.S.C. § 1412(a)(3) (emphasis added).
- The IDEA authorizes a parent 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) (A) (emphasis added).

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assessment, or educational placement of the child or the provision of a free, appropriate public education to the child.
Cal. Educ. Code § 56501(a).

- The federal regulations implementing the IDEA (codified at 34 C.F.R. § 300 et seq.) provide that a parent may file a due process complaint to enforce her and her child's rights under the IDEA. Specifically,

> A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (*relating to the identification*, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

34 C.F.R. § 300.507(a) (emphasis added).

- California Education Code section 56501 provides, in relevant part, that a parent may bring a complaint when there "is a proposal to initiate or change the *identification*, assessment, or educational placement of the child" or when there "is a refusal to initiate or change the *identification*, assessment, or educational placement of the child." Cal. Educ. Code § 56501(a) (emphasis added).

Despite the clear language of these provisions, CUSD nevertheless suggests that section 1415(b)(3)(A)(B) and 34 C.F.R. § 300.503 imply that there is no right to bring a complaint based on inaction, because a district cannot provide notice of inaction. (Opp. at 18). This is a weak and unpersuasive argument. The sections CUSD points to merely address requirements *an educational agency* must satisfy when it decides or declines to take certain actions; they do not deal with what a *parent and child* may complain about.

The applicable provisions are 20 U.S.C. § 1415(b)(6) and its accompanying regulation, 34 C.F.R. § 300.507. They authorize a complaint concerning "*any* matter *relating* to identification . . . of a child." (emphasis added). These broadly-phrased provisions do not limit the content of complaints to affirmative acts or refusals to act. *See M.T.V., et al. v. DeKalb County Sch. Dist.*, 446 F.3d 1153, 1158 (11th Cir. 2006) (the complaint provision of 20 U.S.C. § 1415(b)(6) is "broad" and encompasses a claim for retaliation, which is not specifically enumerated in the statute) (citing *Weber v. Cranston Sch. Comm.*, 212 F.3d 41, 51 (1st Cir. 2000)). *See also Rose v.*

Yeaw, 214 F.3d 206, 210 (1st Cir. 2000) ("The scope of the due process hearing is broad" and the "complaints" identified in 20 U.S.C. § 1415(b)(6) encompass discrimination where school district "*failed* to ensure appropriate accommodation" of student's asthma condition) (emphasis added).

The applicable provisions of the California Education Code are consistent with the federal scheme. Section 56300 provides that "Each district . . . shall actively and systematically seek out" eligible recipients of special education and related services. Cal. Educ. Code § 56300. *Cf.* 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).[3] Section 56301, entitled "Child find process," provides that "All children with disabilities . . . shall be identified, located and assessed . . .." Cal. Educ. Code § 56301(a). *Cf.* 20 U.S.C. § 1412(3)(A); 34 C.F.R. § 300.111(a)(1)(i). Section 56302 ("Identification and assessment of needs") obligates each district to "provide for the identification and assessment of an individual's exceptional needs" and mandates a number of exacting procedures to be followed in meeting this requirement. Cal. Educ. Code § 56302. *Cf.* 20 U.S.C. § 1412(3)(A); 34 C.F.R. § 300.111(a)(1)(i).

To be sure, Section 56501 ("Due process hearing . . .") uses the words "proposal" and "refusal" in characterizing the actions that may give a party the right to initiate a due process hearing,[4] but the broad construction of the corresponding

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[3] Formerly 34 C.F.R. § 300.125.

[4] The ALJ cited *Miller v. San Mateo-Foster City, U.S.D.*, *supra*, for the proposition that the child-find obligation is fairly subsumed within California Education Code section 56501, subdivisions (a)(1) and (2)." (*See* Decision at 17, ¶ 23). *Miller* does not quite establish that proposition. It does note that under federal law child-find programs are mandated and that Cal. Educ. Code § 56300 is California's legislative implementation of that requirement. 318 F.Supp. 2d at 854. It also suggests, without ruling explicitly, that the procedural right to present complaints in 20 U.S.C. § 1415(b)(1)(E) encompasses Child Find claims. *Id.* But in *Miller* the District did not contend that the child-find provisions afford no right to a due process hearing, and the school district-defendant was not charged with failing to detect and address a

federal provisions (*see* Order at 13, *supra*) should apply to this section as well.[5] Under CUSD's proposed reading of section 56501, a substantial number of children with undiagnosed–but undoubtedly diagnosable–disabilities would not be entitled to a FAPE because the school district failed to identify and assess them. This would provide a perverse incentive to school districts to refrain from implementing child-find programs, possibly to limit the attendant costs of providing mandated services to eligible students. *Miller*, *supra*, noted that the objectives of both the IDEA and California were to require school districts "to design a program to identify and provide services to children with special needs." *Miller*, supra, 318 F.Supp.2d at 854 (discussing 20 U.S.C. § 1412(a)(3) and Cal. Educ. Code §§ 5600, 56100(i), 56128). Under CUSD's construction, those objectives would be undermined.

Hacienda La Puente Unified Sch. Dist. of Los Angeles v. Honig, 976 F.2d 487 (9th Cir. 1992) supports the Court's rejection of CUSD's construction of these federal and state statutes. In *Hacienda*, a student was expelled from school after frightening another student with a stolen starter pistol. *Id.* at 489. Thereafter, the student and his parents requested an administrative hearing to determine, among other things, whether the student was eligible for special education and related

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disability.

[5] Section 56501 must be read as a whole and not in isolation. *See United States v. Morton*, 467 U.S. 822, 824 (1984) ("We do not, however, construe statutory phrases in isolation; we read statutes as a whole."). The provisions of the California Education Code cited on the preceding page impose a responsibility on school districts to seek out, identify, and assess children with disabilities. *See* Cal. Educ. Code §§ 56301, 56302. It would be absurd to recognize these responsibilities, but to then preclude students and parents from requiring school districts to discharge them. *See Arizona State Bd. for Charter Schools v. United States Dep't of Educ.*, 464 F.3d 1003, 1008 (9th Cir. 2006) ("[W]ell-accepted rules of statutory construction caution us that statutory interpretations which would produce absurd results are to be avoided.") (internal citation and quotation marks omitted).

services. A hearing officer decided in favor of the student and ordered his reinstatement in school and the provision of compensatory educational services. *Id.* at 489.

The school district "challenged the decision of the hearing officer primarily on the ground that she lacked jurisdiction over the matter." *Id.* at 490. The school district argued that under section 48915.5 (g) of the California Education Code, dealing with expulsion of disabled children, the student had no right to an administrative due process hearing because he had not previously been identified as a student with exceptional needs. The Ninth Circuit described the "essence" of the district's argument as follows: "[T]hat because the IDEA most often refers to children with disabilities . . . it is necessary for a school district or similar agency to identify a child as disabled before the procedural safeguards mandated by 20 U.S.C. § 1415 [i.e., the right to a due process hearing] can be invoked." *Id.* at 492. The Ninth Circuit disagreed, and held that the expelled student was entitled to an administrative due process hearing. *Id.* at 492-93. The Court noted that the district's interpretation of the statute conflicted "with the federal statutory and regulatory law by which California has chosen to abide." *Id.* Therefore, "[e]ven if the School District's interpretation of section 48915.5(g) is correct, we would be obligated to void the statute insofar as it would prevent [the student] from obtaining an administrative hearing on the question of his disability." *Id.* at 492.

D. *Arlington Century* and "Clear Notice"

As indicated above, CUSD also argues that Student and her mother are barred from obtaining the child-find relief afforded to them by the ALJ because CUSD did not have "clear notice" that it would be subject to such liability. In support of this farfetched argument, Plaintiff relies on the Supreme Court's recent decision in *Arlington Century Sch. Dist. Bd. Of Educ. v. Murphy*, __ U.S. __, 126 S. Ct. 2455, 2458 (2006).

In *Arlington*, the parents of a student who had prevailed on his

claims under the IDEA moved to recover expert witness fees that the parents had incurred. The Supreme Court reversed the lower courts' award of such expert fees. Applying well-established principles of Spending Clause jurisprudence and statutory construction, the Court ruled that fees for expert witnesses were not recoverable under the IDEA fee-shifting provisions because the IDEA does not provide clear notice that such fees would be recoverable. *Id.* at 2463.

CUSD argues that, like the school district in *Arlington*, it did not have clear notice that it would be held liable for its failure to timely identify Student's disabilities. (Opp. At 17). CUSD lacks support for this premise. As discussed in considerable detail above, various substantive and procedural provisions in the IDEA, as well as the IDEA's explicit objectives, provided notice to the District that children and their parents may bring a due process complaint on "*any* matter related to the identification . . . of a child . . . ." *See e.g.*, 20 U.S.C. § 1415(b)(6); *see also, Mr. I., et al. v. Maine Sch. Admin. Dist. No. 55*, 480 F.3d 1, ___ (1st Cir. 2007) (rejecting school district's *Arlington*-based argument that the IDEA fails to put states on clear notice that they have a duty to provide benefits to children whose conditions "have merely an 'adverse effect' on their educational performance, because that requirement could be fairly gleaned from the statute's definition of "disability").

E. CUSD's "Educational Malpractice" Concerns

CUSD contends that "[i]f Student's position were accepted, parents with disabled students would essentially be able to assert claims of educational malpractice" and that such claims "are essentially unavailable throughout the United States because of the flood of litigation that would ensue if such claims are cognizable." Opp. p.19 (citing various state court decisions). CUSD's concern that upholding the ALJ decision here will open those floodgates is misplaced.

First, this Court's decision is heavily fact-based (as was the ALJ's decision). The facts cited above in Section II are not disputed. They establish, in essence, that the IDEA violation committed by CUSD resulted not from its educators and

administrators failing to detect Student's disabilities, but their delay in assessing and classifying those disabilities - - which they *had* observed - - as constituting a special learning disability warranting an IEP. (They continued to disregard their child-find duties even after the District's own psychologist recommended a Department of Mental Health assessment.) The CUSD's own documented record provided the basis for the ALJ's decision, not expert testimony based on some witness's application of an educational "standard of care." Moreover, this Court's (and the ALJ's) application of the applicable state and federal statutes do not impose any new requirement or duty on a school district. In short, this case does not at all involve, or even conjure up, the specter of educational malpractice.[6]

VI. CONCLUSION

The IDEA was created to protect and educate children with disabilities. To accept Plaintiff's argument that students cannot enforce their rights under the Child-

[6] CUSD cites various state court decisions in support of its claim that "educational malpractice" is not cognizable. (*See* Opp. at 19-20 (citing *Finstad v. Washburn Univ. of Topeka*, 845 P.2d 685, 476-77) (1993) (refusing to recognize tort cause of action for negligent "conduct and supervision" of class); *Peter W. v. San Francisco Unified Sch.* Dist., 60 Cal.App.3d 814 (1976) (no cause of action for alleged failure to provide plaintiff with adequate instruction in basic academic skills); *Donohue v. Copiague Union Free Sch. Dist.*, 47 N.Y.2d 440, 444 (N.Y. 1979) (Former student may not bring claim that lack of comprehension of written English was due to defendant school district's failure to educate plaintiff; courts lack capacity to make judgments as to validity of broad educational responsibilities, and for courts to do so would interfere with state's constitutional allocation of responsbilities.)). In those cases the courts' refusals to recognize such claims were based on reasons of public policy and a perceived need to protect school districts from a deluge of claims for tort damages. *See Finstad*, 845 P.2d at 693; *Peter W.*, 60 Cal.App.3d at 824-25; *Donohue*, 47 N.Y.2d at 444-45. Here, in contrast, Student and her mother seek to enforce explicit federal and state law and policy, which CUSD purports to embrace, and they do not seek monetary damages.

Find provision of the IDEA would be detrimental to unidentified students with disabilities and in contravention of the explicit language and purpose of the IDEA.

Whether the child-find issue is cognizable in a due process hearing under the IDEA is a legal determination. There is no issue of material fact regarding that question. Accordingly, the Court holds that the ALJ properly concluded that it had jurisdiction to consider the school district's failure to identify, assess and timely provide services to Student. The motion for judgment on the pleadings is GRANTED.[7]

IT IS SO ORDERED.

DATED: April 20, 2007

_____/S/_____
A. HOWARD MATZ
United ed States District Judge

[7] Dkt. No. 19