

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN on behalf of STUDENT,

v.

LAWNDALE SCHOOL DISTRICT.

OAH CASE NO. 2009070392

ORDER DENYING MOTION TO  
DISMISS

On July 10, 2009, Student filed a Request for Due Process Hearing (complaint) against the Lawndale Elementary School District (District), alleging five issues. On July 20, 2009, District filed a Notice of Insufficiency alleging that all five issues were insufficiently pled. On July 28, 2009, the Office of Administrative Hearings (OAH) issued an order ruling that Student failed to sufficiently plead issues one, two, four, and five, and granted Student leave to file an amended complaint within 14 days of the order. OAH further determined that issue three, which alleged that District denied Student a FAPE by failing to convene a manifestation determination hearing, was a request for an expedited hearing. As such, OAH, on July 28, 2009, issued a Scheduling Order and Notice of Expedited Due Process Hearing and Mediation. On July 29, 2009, District filed a Motion to Dismiss Complaint and Expedited Due Process Hearing or, in the Alternative, to Determine the Sufficiency of the Pleadings Pertaining to Issue Three. On August 4, 2009, pursuant to the Scheduling Order, the parties participated in mediation. At the mediation, the parties entered into a stipulation wherein Student waived her right to an expedited due process hearing. On August 11, 2009, Student filed an Amended Request for Due Process Hearing (amended complaint). Issue four of the amended complaint was the same as issue three of the original complaint. On August 12, 2009, District filed a request for OAH to rule on the its July 29, 2009 motion to dismiss issue three of Student's original complaint or, in the alternative, leave to provide notice of the insufficiency of the pleadings of all issues in the amended complaint, within 15 days of the date on which Student filed and served her amended complaint.

All applicable timelines recommence upon the filing of an amended complaint. (20 U.S.C. § 1415 (c)(2)(E)(ii).) When Student filed her amended complaint on August 11, 2009, it rendered moot District's July 29, 2009 motion to dismiss. As such, District's motion to dismiss is denied. However, if District believes Student's amended complaint fails to meet the notice requirements, District may, pursuant to Section 1415, subsection (c)(2)(C), file a notice of insufficiency of the amended complaint within 15 days of its receipt of the amended complaint.

It is so ordered.

Dated: August 17, 2009

/s/

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CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings