

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GARVEY SCHOOL DISTRICT AND
EAST LOS ANGELES REGIONAL
CENTER.

OAH CASE NO. 2012061193

ORDER DENYING MOTION TO
DISMISS

On June 28, 2012, Parent, on behalf of Student, filed a Request for Due Process Hearing (complaint), naming the Garvey School District (Garvey) and the Eastern Los Angeles Regional Center.

On July 5, 2012, Garvey filed a Notice of Insufficiency (NOI) as to Student's complaint. In its NOI, Garvey also requested that Student's complaint be dismissed if the complaint is found insufficient and Student fails to file an amended complaint. District raised no other grounds for dismissal.

On July 9, 2012, the Office of Administrative Hearings (OAH) found Student's complaint to be insufficiently pled under section Title 20 United States Code 1415(c)(2)(D). OAH ordered that Student be permitted to file an amended complaint not later than 14 days from the date of the order. OAH also ordered that if Student fails to timely file an amended complaint, the complaint will be dismissed.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right 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); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the

availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

In the present matter, OAH found Student's complaint to be insufficient. Student may file an amended complaint. However, if Student fails to timely file an amended complaint, the case will be dismissed. Therefore, Garvey's request to dismiss Student's complaint in its NOI of July 5, 2012, is moot and, accordingly denied. If Student timely files an amended complaint, the other parties may file additional motions relating to the amended complaint, such as a NOI or motion to dismiss, as they deem appropriate.

ORDER

Garvey's Motion to Dismiss is denied as moot. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: July 13, 2012

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings