

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 OF DETERMINATION OF
INSUFFICIENCY OF DUE PROCESS
COMPLAINT

On June 28, 2012, Student, through her parent, filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings (OAH)¹ naming the Garvey School District (Garvey) and the Eastern Los Angeles Regional Center (ELARC).

On July 5, 2012, Garvey timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

Notice of Insufficiency as to Garvey

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements.³

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.⁴ These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals with Disabilities Education Act (IDEA) and the relative informality of the due process hearings it authorizes.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

Student’s complaint alleges one claim in her complaint. She states that on April 1, 2012, she requested summer “gap” funding for speech services from the “respondent.” Student states that ELARC informed her parent that Student would have to request these services from Garvey if she wanted them. As a resolution, Student requests that Garvey provide her with summer speech services and that ELARC provide “aid paid pending.”

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁸ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Student's complaint is insufficiently pled. She does not state if she has an individualized educational program (IEP) and, if she does, what her placement and services are. She does not state if she receives speech services from Garvey and/or why she believes she requires them during the summer. Student fails to state what her needs are in the area of speech and why she believes Garvey is not meeting those needs. Student gives no rationale for her request for speech services and specifically fails to give any facts that would explain why Garvey has failed to provide her with a free appropriate public education. The limited information in Student's complaint does not permit Garvey to prepare for resolution or mediation sessions, and does not permit it to prepare a defense for hearing. For these reasons, Student's complaint is insufficient as to Garvey.

Notice of Insufficiency as to ELARC

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

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.)

The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing Individual Program Plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness.

In due process hearings, OAH has jurisdiction over public agencies under the IDEA pursuant to Education Code section 56500 et seq., but not over regional centers providing services under California Early Intervention Services Act (Gov. Code, §§ 95000 et seq.), commonly known as Early Start, created by Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1401, et seq.), which provides services to eligible infants and toddlers from the date of birth until the child's third birthday. (Gov. Code, § 95014.) Regional centers are subject to hearing procedures pursuant to Welfare and Institutions Code section 4700 et seq. In order to contest a decision made by a regional center, a claimant must file a request for fair hearing with the regional center in question, not a request for due process under the IDEA

DISCUSSION

In her complaint, Student states that ELARC directed her parent to seek recourse for summer speech sessions from Garvey, where Student apparently attends school. However, Student's complaint fails to state why ELARC is responsible for providing Student a free appropriate public education and, if so, how it has breached that duty. There are no facts stated that would bring ELARC under the jurisdiction of OAH in a due process filing. Moreover, the remedy that Student seeks from ELARC, "aid paid pending," is not available in a matter brought under the due process provisions of the IDEA. For these reasons, Student's complaint is insufficient as to ELARC.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.⁹ Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. If Student's mother wishes to receive this assistance, she may either write to OAH, Special Education Division in Sacramento, or call OAH at (916) 263-0880, and specify that she is seeking mediator assistance in order to prepare her amended complaint.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D) as to both Garvey and ELARC.

⁹ Ed. Code, § 56505.

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).¹⁰

3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. If Student's mother wishes to receive assistance from an OAH mediator, she must contact OAH as described above.

6. All dates previously set in this matter are vacated.

Dated: July 9, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

¹⁰ The filing of an amended complaint will restart the applicable timelines for a due process hearing.