

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
SUFFICIENCY OF DUE PROCESS
COMPLAINT AS TO GARVEY
SCHOOL DISTRICT; ORDER
DISMISSING ELARC WITH
PREJUDICE

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 9, 2012, OAH issued an Order finding the complaint insufficient as to both Garvey and ELARC and permitting Student to file an amended complaint. Student timely filed her amended complaint on July 23, 2012. Garvey timely filed a Notice of Insufficiency (NOI) as to Student's amended complaint on July 25, 2012.

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 amended complaint states that Student is a child with a disability for whom Garvey has developed an individualized educational program (IEP). Student states that her current operative IEP is dated April 1, 2011. Student states that the IEP provides her with placement in a special day class and specific related services, including speech and language

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).

services. Student indicates that the IEP also provides her with placement at Garvey during the extended school year. However, Student indicates that the IEP does not provide her with any services during the period after the extended school year ends and the regular school year begins. Student states that ELARC has previously provided Student with speech and language services during this “gap” period, but that ELARC has now declined to continue providing the services. Student states that ELARC has directed her to request the services from Garvey, which has refused to provide them. Student states that she requires these additional speech and language services to prevent regression.

Garvey contends that Student’s amended complaint is insufficient because it does not specify the speech program that Student attended through ELARC and which she now wants Garvey to fund. However, Student’s amended complaint provides more than enough specific information to permit Garvey to prepare for resolution or mediation sessions, and to permit it to prepare a defense for hearing. For these reasons, Student’s complaint is sufficient as to Garvey.

Notice of Insufficiency as to ELARC

Student has again named ELARC as a respondent in this due process proceeding. Student contends that it would be in the interest of judicial economy to hold one hearing that includes her allegations as to both Garvey and ELARC rather than a due process hearing as to Garvey and a fair hearing as to ELARC. While Student is correct that it would be more economical to hold one hearing, she fails to acknowledge that OAH does not have jurisdiction over issues involving regional centers. As indicated in the Order issued by OAH on July 9, 2012, 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.) Regional centers are not local educational agencies. They are therefore not proper parties to a due proceeding.

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.

Although it is inconvenient for Student and her family to have to file separate hearing requests against her school district and her regional center, California law as it is presently written does not permit joint hearings for due process and fair hearing matters. ELARC is therefore an improper party to this case. ELARC is therefore dismissed with prejudice.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii) as to Garvey.
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.
3. ELARC is dismissed with prejudice.

Dated: July 26, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings