

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

VALLEY CENTER UNION SCHOOL  
DISTRICT.

OAH CASE NO. 2009010785

DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On January 29, 2009, attorney Shelli J. Lewis, on behalf of Student, filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Valley Center Union School District (District). On February 13, 2009, attorney Brian Sciacca, on behalf of the District filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the due process hearing officer, the Office of Administrative Hearings (OAH), and the other party in writing, within 15 days of receiving the complaint, that the party against whom the complaint was filed believes the complaint has not met the notice requirements. (§ 1415(c)(2)(C)<sup>2</sup>; Ed. Code, § 56502, subd. (d)(1).) Section 1415, subsection (c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

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. The party against whom the complaint has been filed is entitled to know the nature of the specific allegations being made against it, such that the party may be able to prepare a defense.

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<sup>1</sup> 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).

<sup>2</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

(*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

## DISCUSSION

Student's complaint alleges two issues, with numerous sub-issues, against the District regarding the adequacy of the District's Individualized Educational Program (IEP) offer of goals, placement and services. Regarding both issues, the complaint is insufficiently pled because Student merely lists in bullet point form alleged violations by the District. The two issues do not contain an adequate explanation of how the District violated Student's procedural rights or how the IEP fails to meet Student's unique needs. While the complaint contains a brief narrative, the format of the complaint requires the District to guess which facts relate to a particular sub-issue.

Additionally, the complaint fails to include all relevant facts because Student refers to two attached documents and does not allege pertinent facts from the attachments in the complaint. Therefore, the relevant facts are not included on the face of the complaint, and District is left to attempt to determine the pertinent facts by referring to attachments. Finally, Issue Two alleges violations by the District during the 2007-2008 school year and 2008 Extended School Year, but the complaint does not describe any IEP offer by the District for this time period. Student should include information regarding the IEP, if any, in effect at the time of the alleged violations.

As discussed above, a responding party is entitled to know the basis of each claim and the nature of the specific allegations being made against it, with respect to each issue or problem, so that the responding party may be able to prepare a response, prepare for a resolution session, or prepare a defense for hearing. For the reasons described above, Student's complaint is insufficient because it does not comply with the requirements of Section 1415(b)(7).

## ORDER

1. Pursuant to section 1415(c)(2)(D), Student's complaint is insufficiently pled, and the District's notice of insufficiency is granted.

2. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.<sup>3</sup>

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<sup>3</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

3. The amended complaint shall comply with the requirements of 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. All dates previously set in this matter are vacated.

Dated: February 18, 2009

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings