

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT, TWIN RIVERS UNIFIED SCHOOL DISTRICT, SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, SACRAMENTO COUNTY MENTAL HEALTH, SACRAMENTO COUNTY PROBATION DEPARTMENT, SACRAMENTO COUNTY OFFICE OF EDUCATION, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, AND CALIFORNIA DEPARTMENT OF EDUCATION.

OAH CASE NO. 2009050043

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On April 28, 2009, Christian M. Knox, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Mt. Diablo Unified School District (MDUSD), Los Angeles County Office of Education (LACOE), Twin Rivers Unified School District (TRUSD), Sacramento City Unified School District (SCUSD), Sacramento County Mental Health (SCMH), Sacramento County Probation Department (SCPD), Sacramento County Office of Education (SCOE), California Department of Mental Health (CDMH), and California Department of Education (CDE).¹ On May 14, 2009, attorney Rhonda L. Chow, on behalf of SCUSD, filed a Notice of Insufficiency (NOI) as to Student's complaint. Student filed an opposition on May 14, 2009, and SCUSD filed a response on May 15, 2009. None of the other responding parties filed a NOI, or a request to join SCUSD's NOI.

APPLICABLE LAW

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).

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the due process hearing officer of 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);² Ed. Code, § 56502, subd. (d)(1).) Section 1415(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. (*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 contains four issues for hearing against the responding parties during the 2006-2007, 2007-2008, 2008-2009, 2009-2010 school years (SY) and 2009 extended school year (ESY). Regarding Issue One, Student's claim is that LACOE and SCPD denied her a FAPE by failing her with speech and language and behavior services and not convening a timely Individualized Educational Program (IEP) meeting during SY 2006-2007. Regarding LACOE, Student failed to serve a copy of the complaint on LACOE according to the proof of service, nor establish in her May 6, 2009 letter requesting that OAH add LACOE as party that a copy of the corrected complaint had been served upon LACOE. Therefore, Student must re-serve an amended complaint on LACOE.³

This claim is sufficiently supported by the factual allegations to put SCPD on notice of the issues forming the basis of the claim. The complaint contains allegations regarding her need for services to address her unique needs, and when SCPD needed to convene an IEP meeting. Additionally, the complaint contains allegations of fact that SCPD failed to obtain an appropriate educational placement for Student.

Regarding Issue Two, Student's claim is that SCOE, SCPD and TRUSD denied her a FAPE by failing to adequately assess her, not convening a timely IEP meeting and not

² All statutory citations are to Title 20 United States Code unless otherwise noted.

³ Student's May 6, 2009 motion to add LACOE as a party is moot because Student did not establish that a copy of the original or amended complaint was ever served on LACOE.

providing Student with adequate services to meet her unique needs. This claim is sufficiently supported by the factual allegations and, thus, is sufficient, to put SCOE, SCPD and TRUSD on notice of the issues forming the basis of the claim.

Regarding Issue Three, Student's claim is that TRUSD denied her a FAPE during SY 2008-2009 by failing to provide her with an appropriate transition plan, behavior support plan, speech and language therapy and measurable goals in all areas of need. This claim is sufficiently supported by the factual allegations to put TRUSD on notice of the issues forming the basis of the claim.

Regarding Issue Four, Student's claim is that TRUSD, MDUSD, SCUSD, SCPD, SCMH, CDMH, and CDE denied her a FAPE for the 2009 ESY and 2009-2010 SY by failing to offer an appropriate placement and services to meet her unique needs, not including Student in transition planning and not developing an appropriate transition plan. Student alleges in Issue Four that TRUSD, MDUSD, SCUSD, SCPD, SCMH denied Student a FAPE based on these parties failure to develop an IEP at the March 23, 2009 meeting.

Student's complaint in Issue Four does not contain sufficient factual allegations because the complaint does not state if and when TRUSD, MDUSD, SCUSD, SCPD, SCMH CDMH and CDE were required to hold an IEP meeting to plan for Student's return from an out-of-state facility, or if these public agencies made a formal offer of placement. The complaint does not contain sufficient information when Student will return from her present out-of-state placement. Therefore, this claim is not sufficiently supported by the factual allegations to put TRUSD, MDUSD, SCUSD, SCPD, SCMH CDMH and CDE on notice of the facts forming the basis of the claim.⁴

Issues One against SCPD and Issues Two and Three are sufficiently pled to put the responding parties on notice as to the basis of Student's claims.

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. Student's complaint fails to provide this notice in Issue One against LACOE and Issue Four against TRUSD, MDUSD, SCUSD, SCPD, SCMH CDMH and CDE.

ORDER

⁴ SCUSD also asserted in its NOI that it was not an appropriate party to this action because Student was not a resident. Because SCUSD is only named in Issue Four and this issue is not sufficiently pled, SCUSD's contention, and Student's motion to strike are moot.

1. Pursuant to section 1415(b)(7)(A)(ii), Issue One against SCPD, Issue Two against SCOE, SCPD and TRUSD and Issue Three against TRUSD in Student's complaint are sufficient.

2. Pursuant to section 1415(c)(2)(D), Issue Four in Student's complaint against TRUSD, MDUSD, SCUSD, SCPD, SCMHC and CDE are insufficiently pled.

3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.⁵

4. 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.

5. If Student fails to file a timely amended complaint, the hearing shall proceed only on Student's Issue One against SCPD, Issue Two against SCOE, SCPD and TRUSD and Issue Three against TRUSD.

Dated: May 19, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

⁵ The filing of an amended complaint will restart the applicable timelines for a due process hearing.