

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2009080605

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On August 12, 2009, attorney Kathleen M. Loyer, on behalf of the District, filed a Due Process Hearing Request (complaint) against the Temecula Valley Unified School District.¹ On August 19, 2009, Peter A. Sansom, on behalf of the District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

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. (§ 1415(b)(7)(A)(ii)(III) & (IV);² Ed. Code, § 56502, subd. (c)(1).)

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice requirements. (§ 1415(c)(2)(C); 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.

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

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

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 alleges four issues against the District. The issues involve the District's purported denial of FAPE to Student from August 2007 through the present by not assessing Student in all areas of suspected disability, and failing to develop an individualized educational program (IEP) that appropriately addressed Student's unique needs. Student also asserts that the District should be required to change his primary eligibility category for special education services from speech and language impaired and specific learning disability to other health impaired (OHI), and that he needs to repeat fifth grade.

Regarding Issue One, Student's complaint does not contain sufficient factual allegations to provide the required notice to District because the complaint does not state if the District failed to assess Student in any specific area of suspected disability such as visual processing, fine motor, executive function, sensory integration, attention, or social-emotional functioning. If the District assessed Student in these areas, the complaint does not set forth when the District conducted the assessments or why the assessments were not adequate.

Regarding Issue Two, Student's complaint only alleges violations regarding the District's November 2008 IEP. Student's complaint contains sufficient factual allegations to support his claim that the District's November 2008 IEP denied him a FAPE because the IEP failed to adequately address his unique needs, and that the District failed to properly implement the services and accommodations in the IEP. This claim is sufficient to put the District on notice of the issues forming the basis of this claim regarding the November 2008 IEP.³

Regarding Issue Three, Student's complaint contains sufficient factual allegations to support his claim that the District denied Student a FAPE by not changing his eligibility for special education services from speech and language impaired and specific learning disability to OHI. This claim is sufficient to put the District on notice of the issues forming the basis of this claim.

Regarding Issue Four, Student's complaint contains sufficient factual allegations to support his claim that he needs to repeat the fifth grade to make meaningful educational progress. This claim is sufficient to put the District on notice of the issues forming the basis of this claim.

³ If Student contends that the District denied Student a FAPE as to IEPs other than the November 2008 IEP, Student will need to amend his complaint and identify those IEPs.

Therefore, based on the foregoing, Student's Issues Two, Three and Four are sufficiently pled to put the District 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.

ORDER

1. Pursuant to section 1415(b)(7)(A)(ii), Issues Two, Three and Four of Student's complaint are sufficient.
2. Pursuant to section 1415(c)(2)(D), Issue One of Student's complaint is insufficiently pled.
3. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.⁴
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 Issues Two, Three and Four.

Dated: August 27, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

⁴ The filing of an amended complaint will restart the applicable timelines for a due process hearing.