

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2009041036

DETERMINATION OF SUFFICIENCY
OF DUE PROCESS COMPLAINT

On April 28, 2009, Parent, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Temecula Valley Unified School District (District).¹ On May 6, 2009, attorney Cynthia D. Vargas, 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 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.

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.

(*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 six problems against the District regarding its purported failure to timely assess Student and to properly implement Student's Individualized Educational Program (IEP). Regarding Problem One, Student's complaint does not contain sufficient factual allegations to support his claim that the District did not timely conduct a technology review. For example, Student does not specify the date, or approximate date, when the District agreed to the technology review. Therefore, the complaint does not put District on notice of the issues forming the basis of the claim.

Regarding Problem Two, Student's claim that is the District denied him a FAPE because his present IEP does not provide him with assistive technology services. This claim is sufficiently supported by the factual allegations to put the District on notice of the issues forming the basis of the claim because the complaint contains allegations why Student requires assistive technology services to meet his unique needs and to make meaningful educational progress.

Regarding Problem Three, Student's complaint does not contain sufficient factual allegations about his English teacher's purported failure to use state-approved curriculum to put District on notice of the issues forming the basis of the claim. Student does not allege whether the teacher provides this instruction to all students in her class or how her failure to use appropriate curriculum denies Student a FAPE. Therefore, this issue is insufficiently stated.

Regarding Problems Four, Five and Six, Student's complaint does not contain sufficient factual allegations as to how the District's alleged failure to properly implement Student's present IEP denied him a FAPE and, therefore, does not put District on notice of the issues forming the basis of the claim. Student needs to allege how the District's failure to implement Student's IEP was a one-time event or a continuous violation.

Problem Two is 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 Problems One, Three, Four, Five and Six.

Pursuant to Education Code section 56505, subdivision (e)(6), a parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in

identifying the issues and proposed resolutions that must be included in a complaint. If Student's parent requests the assistance of a mediator in identifying the issues, Student's parent should contact OAH immediately in writing.

ORDER

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

Dated: May 8, 2009

/s/

PETER-PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

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