

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SADDLEBACK VALLEY UNIFIED  
SCHOOL DISTRICT AND SOUTH  
ORANGE COUNTY SELPA.

OAH CASE NO. 2009090543

MOTION TO DISMISS PARTY AND  
DETERMINATION OF SUFFICIENCY  
OF DUE PROCESS COMPLAINT

On September 15, 2009, Mark Woodsmall, attorney for Student, filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Saddleback Valley Unified School District (District) and the South Orange County Special Education Local Plan Area (SELPA).<sup>2</sup> On September 30, 2009, Epiphany Owen, attorney for the District and the SELPA filed a Notice of Insufficiency (NOI) and a Motion to Dismiss the SELPA. Student has not filed an opposition to the motion to dismiss.

APPLICABLE LAW

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 & 56028.5.)

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

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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> While the complaint and proof of service are dated September 15, 2009, the fax transmission line displays the complaint as having been faxed at approximately 9:42 p.m. on September 14, 2009. Even if the fax transmission line is correct, the complaint is deemed filed on September 15, 2009, given that it was received after close of business of the prior day. Accordingly, the Notice of Insufficiency is deemed to be filed within the requisite 15 day time line.

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);<sup>3</sup> 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 defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

## DISCUSSION

### *Motion to Dismiss SELPA*

Student's complaint names the SELPA as a party in the caption. In the body of the complaint, Student does not allege that the SELPA has any responsibility to the Student, has participated in any decision making process concerning the Student, or has provided any special education services or placement to the Student. Student has failed to identify any issues as to the SELPA and the motion to dismiss the SELPA is granted.

### *Notice of Insufficiency*

Student's complaint alleges one claim with several subparts. Taking each subpart as a specific claim, Student alleges the following:

The first claim, numbered A(1), alleges that the Student obtained independent assessments from three individuals, Dr. Ermshar, Dr. Spitzer and Carol Atkins. Student asserts that the reports from these assessments were provided to the District prior to and during the Individualized Education Program (IEP) team meetings for both the 2008-2009 school year (SY) and SY 2009-2010. The allegation is that the District failed to consider the independent evaluation reports at these IEP team meetings. The claim identifies sufficient facts and dates to document the problem to permit the District to adequately respond to the claim and attempt to participate in a resolution session and mediation.

The second claim, numbered A(2), alleges that the Student asked for an independent educational evaluation (IEE) for social and pragmatic language at IEP meetings of June 4, 2008, October 14, 2008, and May 14, 2009. The District refused the request and did not file for a due process hearing to determine the sufficiency of its assessment. The claim identifies

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<sup>3</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

sufficient facts and dates to document the problem to permit the District to adequately respond to the claim and attempt to participate in a resolution session and mediation.

The third claim, numbered B, alleges that Student's IEP for SY 2008-2009 does not contain measurable goals and objectives, specifically having to do with information on prompt levels, prompt methods and prompt fading. District asserts that the IEP document contains many goals and objectives, some that do not contain any language regarding prompting of Student. Student's claim is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem. It cannot be determined which goals, types of goals or even set of goals are being challenged as being unmeasurable.

The fourth claim, numbered C(1), alleges that Student was denied a FAPE during the 2008 and 2009 extended school year (ESY) portions of the school year. Student had identified the programs he was offered, what he was provided and why this denied him a FAPE. The claim identifies sufficient facts and dates to document the problem to permit the District to adequately respond to the claim and attempt to participate in a resolution session and mediation.

The fifth claim, numbered C(2), contains four subparts and is titled under SY 2008-2009. The four subparts allege disagreement on the level of services for occupational therapy, speech and language therapy; a failure to address auditory processing needs; and, a predetermination of placement in the June 4, 2008, and May 14, 2009, IEPs. While the title limits the claims to SY 2008-2009, the body of the claims assert violations into the SY 2009-2010. It is unclear as to which school year each these claims are applicable. Student's claims, numbered C(2)(i)-C(2)(iv) are insufficiently pled in that they fail to provide the District with the required notice of a description of the problem and the facts relating to the problem.

The sixth claim, numbered D(1), alleges that the District prevented Student's parents from participating in the IEP process. It fails to provide any description of the problem or facts relating to the problem because it contains merely a recitation of the applicable law regarding parental participation. Student's claim is insufficiently pled in that it fails to provide the District with the required notice of a description of the problem and the facts relating to the problem.

## ORDER

1. The SELPA's motion to be dismissed as a party is granted.
2. Pursuant to section 1415(b)(7)(A)(ii), claims A(1), A(2), and C(1) of Student's complaint are sufficient.

3. Pursuant to section 1415(c)(2)(D), claims B, C(2)(i)-C(2)(iv), and D(1) of Student's complaint are insufficiently pled.

4. Pursuant to section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint.<sup>4</sup>

5. 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.

6. If Student fails to file a timely amended complaint, the hearing shall proceed only on Student's claims A(1), A(2), and C(1).

Dated: October 05, 2009

/s/

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BOB VARMA  
Administrative Law Judge  
Office of Administrative Hearings

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