

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED  
SCHOOL DISTRICT AND RIVERSIDE  
COUNTY MENTAL HEALTH.

OAH CASE NO. 2010080742

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On August 18, 2010, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Temecula Valley Unified School District (District) and Riverside County Mental Health (RCMH).

On August 31, 2010, Temecula Valley Unified School District (District) filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.<sup>2</sup> The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A).

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.<sup>3</sup> These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.<sup>4</sup>

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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> 20 U.S.C. § 1415(b) & (c).

<sup>3</sup> 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)

<sup>4</sup> See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”<sup>5</sup> The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.<sup>6</sup> Whether the complaint is sufficient is a matter within the sound discretion of the ALJ.<sup>7</sup>

## DISCUSSION

Student’s alleges twelve claims in the complaint, some of which are sufficient and some which are insufficient. Issues 1, 2, 3, 4, 5, 6, 7, 8, 9, and 12 are sufficiently pled to put District on notice as to the basis of Student’s claims. Student claims the District failed to: (1) assess appropriately in the area of emotional disturbance, (2) offer an appropriate placement at the January 12, 2010, April 23, 2010 and June 10, 2010 IEPs, (3) develop and offer an IEP placement within statutory timelines, (4) conduct the June 3, 2010 IEP meeting with the parent and properly notify parent of the meeting, (5) develop the June 3, 2010 IEP with the participation of parent, (6) insure that RCMH’s assessment report was discussed with parent (Cal. Code Regs., § 60045(f)), (7) insure that RCMH’s assessment report was provided to parent at least two days prior to the June 3, 2010 IEP meeting, (8) include parent in the development of Student’s assessment plan, (9) provide prior written notice, and (12) make a specific offer of placement and program at the January 12, 2010, April 23, 2010 and June 10, 2010 IEPs.

Issues 10 and 11 of Student’s complaint are insufficiently pled in that they fail to provide District with the required notice of a description of the problem and the facts relating to the problem. Student alleges that District failed to appropriately respond to a request for an independent educational evaluation (IEE). However, Student fails to state any facts regarding what assessment District failed to properly conduct, when Student requested the IEE, and the District’s response to the request. With regards to Issue 11, Student alleges that District developed and changed an IEP document outside of the IEP process including modifying and

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<sup>5</sup> Sen. Rep. No. 108-185, *supra*, at p. 34.

<sup>6</sup> *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

<sup>7</sup> Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

removing goals, developing a transition plan, and removing a document that had been attached to the IEP by the team. However, Student fails to identify what IEP was altered and when the modification occurred and what had been attached and then removed from the IEP. Therefore, Student has failed to state sufficient facts supporting issues 10 and 11, and these claims are insufficient.

### ORDER

1. Issues 1, 2, 3, 4, 5, 6, 7, 8, 9, and 12 of Student's complaint are sufficient under section 1415(b)(7)(A)(ii).
2. Issues 10 and 11 of Student's complaint are insufficiently pled under section 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under section 1415(c)(2)(E)(i)(II).<sup>8</sup>
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 Issues 1, 2, 3, 4, 5, 6, 7, 8, 9, and 12 in Student's complaint against the District.

Dated: September 8, 2010

/s/

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CLARA SLIFKIN  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>8</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.