

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

TAMALPAIS UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015010202

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On December 16, 2014, Student filed a due process hearing request¹ (complaint) naming Tamalpais Union High School District.

On December 30, 2014, Tamalpais filed a notice of insufficiency as to Student's complaint.² On January 9, 2015, Student filed a response to the NOI.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.³ The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code 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

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 OAH does not have a record of receiving either Student's complaint or the NOI during December 2014, but copies of the documents were sent to OAH by Tamalpais in January 2015. OAH filed the documents in January, but deemed the case "opened" as of December 16, 2015. Likewise, the NOI is deemed to be timely filed.

³ 20 U.S.C. § 1415(b) & (c).

public education 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.⁴ 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.⁵

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁶ 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.⁷ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁸

DISCUSSION

Tamalpais contends that Student’s complaint is insufficient because it does not indicate whether Student’s parent had standing to file the complaint on behalf of Student (who is over 18 years old). On January 5, 2015, Student’s parent filed a document indicating that Student’s parent holds Student’s educational rights. Therefore, Tamalpais’ contention is not well taken.

Tamalpais next objects to each of the issues in Student’s complaint. To determine the sufficiency of these issues, it is necessary to look at each separately.

⁴ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

⁵ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁶ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁷ *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.].

⁸ 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).

Student's first issue contends that Tamalpais failed to include an individual transition plan in Student's individualized education program until March 2, 2013, and thereafter failed to include a proper transition plan in his IEP's. That issue is sufficiently pled to go forward.

Student's second issue alleges that Tamalpais: 1) failed to comply with Student's IEP's in 2012 and 2013 by failing to give Student STAR testing; 2) failed to assess Student properly in time for his transition back to Redwood High School in his senior year; and 3) placed Student in inappropriate remedial social studies classes. These allegations are sufficient to place Tamalpais on notice of what Student is alleging.

Tamalpais objects to the issue, in part, because 2012 is prior to the statute of limitations period. If so, that is a matter which can be addressed during the prehearing conference; there is no need to delay the case by finding the issue insufficient and requiring Student to file an amended complaint.

Student's third issue alleges that Student's 2013 and 2014 IEP's did not include appropriate academic goals. This issue is sufficiently pled.

Student's fourth issue alleges that Tamalpais engaged in discriminatory conduct by pressuring Student to complete his graduation requirements in December 2013 instead of June 2014. Tamalpais argues that the issue is insufficient because it alleges a claim of discrimination which is outside the jurisdiction of OAH in a due process proceeding. Tamalpais is confusing the function of an NOI. An NOI simply addresses whether an issue has been alleged sufficiently to put the responding party on notice of the claims. If Tamalpais wishes to argue that the issue should be dismissed because of lack of jurisdiction, Tamalpais should raise that concern at the prehearing conference or by bringing a motion to dismiss, not through an NOI.

Student's fifth issue alleges that Tamalpais failed to provide appropriate supports and services to assist with Student's transition to the public high school. This issue is appropriately pled.

Student's sixth issue alleges that Tamalpais' IEP team members at Student's February 28, 2014 IEP team meeting failed to review the data and recommendations from the December 2013 neuropsychological assessment and failed to include any of the recommendations from the assessment in Student's 2014 IEP. That allegation is sufficient.

The issue also alleges that Tamalpais' IEP team members improperly claimed that they had no authority to make a decision regarding continuation of a service requested by Student's parents. Although this issue is somewhat ambiguous, the facts alleged below it clarify that Student is alleging predetermination of the IEP (that Tamalpais' IEP team members claimed they had no authority to "commit to resources other than those that they had already written into the IEP before the IEP meeting").

Student's seventh issue alleges that Tamalpais failed to report on whether Student met his annual goals and transition goals upon his graduation. This issue is sufficiently pled.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: January 12, 2015

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings