

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MILL VALLEY SCHOOL DISTRICT;
TAMALPAIS UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2011050724

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 17, 2011, Student's parents on behalf of Student (Student) filed a due process hearing request¹ (complaint) naming the Mill Valley School District (Mill Valley) and Tamalpais Union High School District (Tamalpais).

On June 1, 2011, Tamalpais filed a Notice of Insufficiency (NOI) and Motion to Dismiss Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² 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 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.³ These

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 20 U.S.C. § 1415(b) & (c).

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

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.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ 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.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Tamalpais contends that Student currently attends school in Mill Valley and is not yet a pupil within Tamalpais’s jurisdiction. Student’s due process request alleges that Mill Valley assessed Student and found that Student was not eligible for special education. Student’s main factual allegations against Tamalpais state that Tamalpais and Mill Valley “held a joint IEP and spoke as a unit at the IEP meeting.” Student also alleges that Student will transition into Tamalpais in August 2011.

Those allegations are not sufficient to state a claim against Tamalpais. However, nothing in Tamalpais’s motion addresses the allegations against Mill Valley. Therefore the complaint is found to be insufficient only as to Tamalpais. All mediation, prehearing conference and hearing dates in Student’s case will remain on calendar as to Mill Valley.

Should Student choose to file an amended complaint, the filing of the complaint will vacate all dates against Mill Valley as well as Tamalpais and will restart the timelines.

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

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *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.].

⁷ 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).

Should Student choose not to file an amended complaint, the hearing will proceed as scheduled against Mill Valley.

Based on the finding of insufficiency, Tamalpais's motion to dismiss is moot.

ORDER

1. Student's complaint is insufficiently pled under section Title 20 United States Code 1415(c)(2)(D) as to Tamalpais Union High School District only. All mediation, prehearing conference and hearing dates are vacated as to Tamalpais only. All dates remain on calendar as currently set as to Mill Valley.

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).

3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, Tamalpais will be dismissed and the case will proceed against Mill Valley School District on the dates currently set.

5. If Student files an amended complaint, all dates previously set in this matter are vacated as to both Mill Valley and Tamalpais as of the date of filing the amended complaint. The filing of the amended complaint will restart the applicable timelines for a due process hearing.

6. The motion to dismiss filed by Tamalpais is moot.

Dated: June 6, 2011

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings