BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SALINAS UNION HIGH SCHOOL DISTRICT AND MONTEREY COUNTY OFFICE OF EDUCATION.	OAH CASE NO. 2013040226 ORDER OF DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT; DENYING MOTION TO DISMISS

On April 4, 2013, Parents, on behalf of Student (Student), filed a Request for Due Process Hearing[1] (complaint) naming the Salinas Union High School District (District) and Monterey County Office of Education (MCOE).

On April 15, 2013, MCOE filed a Notice of Insufficiency (NOI) as to Student's complaint, or in the alternative a Motion to Dismiss Student's complaint. In addition to the above, on April 16, 2013, MCOE filed a NOI and Motion to Dismiss Student's complaint in separate filings.[2] No response to the Motion to Dismiss was received from Student or District.

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

[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] MCOE requests a dismissal of Student's complaint on the ground that the complaint fails to identify any issues or disputes relating to the provision of special education and related services by the MCOE. Because Student's compliant is found to be insufficient pled against MCOE, as set forth below, MCOE's Motion to Dismiss is deemed moot. However, Student will be granted leave to amend the complaint. MCOE may present a new Motion to Dismiss Student's complaint upon the filing of an amended complaint, as necessary.

[3] 20 U.S.C. § 1415(b) & (c).

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. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV)) 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.[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 Individuals with Disabilities Education Act (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

Student's complaint contains three issues for hearing. All of the issues relate to District, and include various facts alleging that District denied Student a FAPE from March 16, 2011 through the present. As discussed below, Student's compliant is found insufficient as to MCOE only, as only MCOE's NOI is being considered in this order.

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[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).

Sufficiency as to MCOE

Issue One. Student's Issue One alleges that from March 16, 2011 through the present, District denied Student a FAPE by:

a. failing to offer Student an individualized educational program (IEP) that includes instructional services, related services, supports and supplementary aids including assistive technology (AT), designed meet his unique needs in the areas of hearing, comprehension, speech and language (SAL), reading, spelling, writing, math, note-taking, behavior, social functioning, self-help, and mental health services (as of December 5, 2011);

b. failing to offer Student an IEP that includes measurable goals and meet his unique needs in the areas of hearing, comprehension, SAL, reading, spelling, writing, math, note-taking, behavior, social functioning, and self-help;

c. failing to offer Student an IEP that includes description of his current level of performance resulting in a deprivation of meaning educational opportunity to Student and an impediment of Parent's ability to participate in the IEP development process;

d. failing to consider or address Parents' concerns regarding Student's educational related mental health needs, failing grades and inability to participate in classes, as shared by Parents at the IEP team meetings held in December 2011, April 2012 and January 2013;

e. failing to consider Student's communication needs in developing his IEP;

f. failing to assess Student in all areas of suspected disability and needs, including AT, audiology, behavior, independent living skills, vocational needs, and mental health (as of December of 2011); and

g. failing to assess Student in all areas of suspected disability, including SAL, psychoeducational and academics.

Student alleges that District denied him a FAPE as a consequence of these violations of his IDEA rights. Student's Issue One fails to make any allegation against MCOE and fails to provide related facts sufficient to allow MCOE to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's Issue One is insufficiently pled against MCOE.

Issue Two. Student's Issue Two alleges procedural violations against District, and contends that the violations significantly impeded Parent's ability to participate in the IEP development process, and thus deprived Student educational opportunity. Specifically, Issue

Two alleges that from March 16, 2011 through the present, District procedurally denied Student a FAPE by:

a. failing to provide Parents with information regarding Student's progress or lack of progress towards his IEP goals;

b. failing to translate assessments' documents into Parent's primary language, Spanish, at or before IEP team meetings;

c. failing to translate IEP documents into Spanish before soliciting Parents' signatures on the documents for consent;

d. failing to provide Parents with prior written notice of District's refusal to provide Student with counseling services, and increased instructional support and services requested by Parents;

e. failing to have all the required members at Student's IEP team meeting held on April 23, 2012; and

f. failing to timely hold and IEP team meeting in December 2012 to review and revise Student's IEP.

Just as above, Student's Issues Two fails to make any allegation against MCOE and fails to provide related facts sufficient to allow MCOE to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's Issue Two is insufficiently pled against MCOE.

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Issue Three. Student's Issue Three alleges that from March 16, 2011 through the present, District continues to deny Student a FAPE by:

a. failing to develop an individualized transition plan (ITP) that is designed to meet Student's unique needs and facilitate his movement into integrated employment, post-secondary education and independent living;

b. failing to develop an ITP that includes appropriate transition goals based on assessment relating to training, education employment and independent living;

c. failing to include necessary transition services in Student's ITP that are designed to assist him in meeting his post-secondary goals;

d. failing to invite outside agencies to Student's IEP team meetings when Student's ITP was developed;

e. failing to invite Student's to the IEP team meetings in which his ITP was developed; and

f. failing to hold IEP team meetings in manners that enable Student to meaningfully participate given his severe hearing impairment.

Student's Issue Three fails to make any allegation against MCOE and fails to provide related facts sufficient to allow MCOE to prepare a defense, and participate in a resolution session and mediation. Accordingly, Student's Issue Three is insufficiently pled against MCOE.

Proposed Remedies

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student's complaint are well-defined, and as such would meet the statutorily required standard of stating a resolution to the extent known and available at this time.

In his complaint, Student seeks a number of remedies including appropriate placement and compensatory education. Student requests that District refer him to the California School for the Deaf Fremont (CSDF) for assessment and/or placement, and provide other appropriate placement, services, supports and accommodations as necessary for Student to receive a FAPE. Further, Student requests that District: 1) hold an IEP team meeting to review and revise Student's IEP in accordance to relevant assessors' recommendations; 2) offer Student independent educational evaluations; and 3) offer Student an extended school year services and revise Student's ITP as necessary, among others. As detailed Student's complaint, and based on the forgoing discussion, Student's proposed resolutions are found to be sufficiently identified.

However, while Student's complaint names MCOE and sets out some preliminary information regarding MCOE, it fails to identify either a problem or provide related facts as to any procedural or substantive violations under the IDEA that MCOE committed. The complaint fails to allege a denial of FAPE against MCOE, and fails to make any specific allegations against MCOE. It fails to put MCOE on notice as to the allegations against it so that it may prepare a defense, or participate in a resolution session and mediation. Accordingly, as to MCOE, Student's complaint is legally insufficient.

ORDER

1. Student's complaint is insufficiently pled as to MCOE pursuant to title 20 United States Code section 1415(c)(2)(D),

2. Pursuant to title 20 United States Code section 1415(c)(2)(E)(i)(II), Student shall be permitted to file an amended complaint as to MCOE.[8]

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. All mediation, prehearing conference and hearing dates in this matter are vacated as to MCOE. All mediation, prehearing conference and hearing dates as to District are confirmed.

5. MCOE's Motion to Dismiss is denied as moot.

Dated: April 18, 2013

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

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