

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
SUPERINTENDENT OF PUBLIC INSTRUCTION**

IN THE MATTER OF THE EDUCATION OF) **ORDER RE: SCHOOL DISTRICT'S**
STUDENT and VERNONIA SCHOOL) **SUFFICIENCY CHALLENGE TO**
DISTRICT) **STUDENT'S DUE PROCESS**
) **COMPLAINT AND FINAL ORDER**
)
) Case No. DP 16-122

On November 8, 2016, Parent filed a Due Process Complaint (complaint or due process complaint) with the Oregon Department of Education (Department). In that complaint, Parent alleged that the Vernonia School District (the School District) denied Student a free appropriate public education by removing Student from a class in violation of OAR 581-015-2205, 581-015-2205, 581-015-2210, 581-015-2240, 581-015-2250 and 581-015-2310. Parent also alleged the School District violated OAR 581-015-2300 by refusing to provide Parent access to Student's educational records. On November 9, 2016, the Department referred the complaint to the Office of Administrative Hearings (OAH).

On November 9, 2016, the OAH acknowledged receipt of the complaint, and notified Parent and the School District that it had assigned the case to Administrative Law Judge (ALJ) Alison Greene Webster. The OAH also scheduled a pre-hearing conference for December 9, 2016.

On November 15, 2016, counsel for the school district, Kelly D. Noor, submitted a timely challenge to the sufficiency of Parent's due process complaint. The School District asserted that Parent's due process complaint fails list a critical component, specifically, a proposed resolution of the problem as required under 20 U.S.C. §1415(b)(7), 34 C.F.R. 300.508(b) and OAR 581-015-2345.

DISCUSSION

The IDEA provides for due process hearings to challenge a local educational agency's identification, evaluation, educational placement or provision of a free and appropriate public education to children. 20 U.S.C. §1415(b)(6). 20 U.S.C. §1415(b)(7)(A)(ii) requires that the due process complaint contain the following information:

- (I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

* * * * *

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

See also OAR 581-015-2345(1)(a)(B).¹

Under 20 U.S.C. §1415(b)(7)(B), a party may not have a due process hearing until the party files a notice that meets the requirements of subparagraph (A)(ii). *See also* OAR 581-015-2345(1)(c). However, a due process complaint is presumed to meet these notice requirements unless it is challenged by the school district. 20 U.S.C. §1415(c)(2)(A); OAR 581-015-2350(1).

When, as here, a school district challenges the complaint, the ALJ must determine from the face of the hearing request whether or not it meets the notice requirements. 20 U.S.C. §1415(c)(2)(D); OAR 581-015-2350(2).² If so, the matter will proceed to hearing. If not, the ALJ must dismiss the complaint. The parent then may file an amended complaint only if the school district consents to the amended complaint or the ALJ grants permission for the amendment. 20 U.S.C. §1415(c)(2)(E); OAR 581-015-02350(3).

Here, Parent filed a complaint that includes Student’s name, address and school, and provides a description of the problem and the facts relating to the problem, but it fails to comply with 20 U.S.C. §1415(b)(6)(A)(ii)(IV) and OAR 581-015-2345(1)(a)(B)(iv), because it does not propose a resolution of the problem or indicate that Parent has no known and available proposed resolutions.

As set out above, a request for a due process hearing must include certain information. The purpose for the notice requirement is to give the other side the “who, what, when, where and why” details about the reasons the party is requesting a hearing, and what can be done to resolve the dispute between the parties. A due process complaint that fails to describe the problem or propose a solution impedes both prompt resolution and an effective due process hearing.

¹ OAR 581-015-2345(1)(a)(B)(iv) similarly requires that the notice include “[a] proposed resolution of the problem to the extent known and available to the party at the time.”

² OAR 581-015-2350(2) provides:

Within five days of receiving notice that a party is objecting to the sufficiency of the other party's hearing notice, the administrative law judge must make a determination on the face of the hearing request of whether the hearing request meets the requirements of OAR 581-015-2345, and must immediately notify the parties in writing of that determination.

To meet the due process notice requirement, a complaint must include a proposed resolution of the problem to if the complainant has a proposed resolution. Even if the complainant does not know of a resolution to propose, the complaint should specify that there is no known and available resolution at the time. In this case, Parent's due process complaint is silent on the matter of a proposed resolution. Because of this, Parent's complaint does not meet the requirements of 20 U.S.C. §1415(b)(7)(A)(ii) and does not allege a violation of the IDEA. Accordingly, the complaint will be dismissed and not proceed to a hearing.

Pursuant to OAR 581-015-2350(3), a party may amend a hearing request only if: (A) the other party consents or (B) the ALJ grants permission. Pursuant to OAR 581-015-2350(4), if a party files an amended hearing request, the applicable timelines for the resolution session and resolution period begin again with the filing of the amended hearing request.

ORDER

The due process complaint filed by Parent is insufficient and is **DISMISSED**. The pre-hearing conference scheduled for December 9, 2016 is **CANCELLED**.

/s/ Alison Greene Webster
Senior Administrative Law Judge
Office of Administrative Hearings

APPEAL PROCEDURE

NOTICE TO ALL PARTIES: If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER**.

ENTERED at Salem, Oregon this 18th day of November 2016 with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 255 Capitol Street NE, Salem, OR 97310-0203.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing ORDER RE: SCHOOL DISTRICT'S SUFFICIENCY CHALLENGE TO STUDENT'S DUE PROCESS COMPLAINT AND FINAL ORDER in Case No. DP 16-122 on the foregoing parties on the 18th day of November 2016 by depositing a copy of said document in a sealed envelope in the United States Mail at Salem, Oregon, with the postage thereon fully prepaid, and addressed to:

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