

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF EDUCATION**

IN THE MATTER OF THE EDUCATION OF STUDENT AND LAKE OSWEGO SCHOOL DISTRICT) RULING ON DISTRICT’S MOTION) FOR DETERMINATION OF) SUFFICIENCY OF DUE PROCESS) NOTICE AND FINAL ORDER)) OAH Case No. 2017-ABC-01053) Agency Case No. DP 17-127
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On October 26, 2017, Parent of JG filed a request for due process hearing (due process complaint) with the Oregon Department of Education (Department). In that complaint, Parent raised concerns involving the identification, evaluation and provision of a free appropriate education to Student. The Department referred the complaint to the Office of Administrative Hearings (OAH). On November 2, 2017, the OAH acknowledged receipt of the complaint.

Meanwhile, on October 31, 2017, Parent filed an amended due process complaint with the Department. In the amended complaint, Parent alleged the District violated the IDEA and Section 504 of the Rehabilitation Act of 1973 by denying Parent access to Student’s academic records, limiting Parent’s ability to participate in Student’s IEP meeting, and failing to consider a new evaluation of Student.

On November 14, 2017, the District, through its attorney Richard Cohn-Lee submitted a Motion for Determination of Sufficiency of Due Process Notice challenging to the sufficiency of Parent’s amended due process complaint. The District asserted that Parent’s due process complaint fails to satisfy the requirements of 20 U.S.C. §1415(b)(7)(A) as it fails to provide sufficient facts to support the allegations and fails to give the District fair notice of the issues for hearing.

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;

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(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.

OAR 581-015-2345(1)(a)(B) contains similar notice requirements for a parent request for a due process hearing.¹ When a parent files a request for hearing alleging a violation of Section 504 of the Rehabilitation Act of 1973 in addition to (or as opposed to) a violation of the IDEA, these same prehearing and hearing procedures apply. OAR 581-015-2395(3), (4).

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). Nonetheless, 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 the complaint 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).

In this case, as discussed below, Parent’s complaint fails to comply with 20 U.S.C. §1415(b)(6)(A)(ii) and OAR 581-015-2345(1)(a)(B)(iii), because it does not provide a sufficient description of the nature of the problem, including facts relating to the problem.

The purpose for the notice requirements set out in 20 U.S.C. §1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(iii) is to give the other side the “who, what, when, where, and why” details about the reasons the party is requesting a hearing. The detailed information allows the parties to resolve the issues through mediation or to prepare for a due process hearing. Whereas a due process complaint that lacks sufficient factual detail about the nature of the dispute

¹ For example, OAR 581-015-2345(1)(a)(B)(iii) requires that the notice include “[a] description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem[.]”

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.

impedes both resolution and an effective due process hearing because it does not provide the other party with fair notice and makes it very difficult for the other party to respond to the complaint in any substantive way.

Here, Parent's amended complaint identifies three areas of concern and includes numerous allegations labeled "whys," but it fails to adequately state or describe the nature of the problem (or problems) related to Student's education, as required by the IDEA. For example, in Concern #1, Parent alleges that in an email on October 24, 2017, the District violated:

Rights of Parent to act on behalf of minor child, depriving rights afforded child including but not limited to provisions under 504 provisions, IDEA for full and equal access to education representation and services afforded [student]. This includes but not limited to access to academic records, meetings with members prior to full IEP team meeting, and opportunity to address diagnosed needs in diagnosis.

(Amended Complaint at 2.) This statement of concern is then followed by several "why" allegations that are confusing and, on their face, bear no clear relationship to the statement of concern. The "why" allegations reference changes to custody and legal representation, prior joint meetings between the parents and school personnel, confidentiality of a parent's request, and an October 27, 2017 "letter addressing diagnosis."

As explained above, the IDEA requires that the due process complaint present a detailed and a complete statement of the issues. The complaint frames the scope of the hearing. Issues that are not raised in the hearing request may not be raised at the hearing. *See* OAR 581-015-2360(2). Therefore, as the District notes in its sufficiency challenge, Parent's claim in Concern #1 that the list of alleged deprivations is not exclusive (*i.e.* "this includes but not limited to") is on its face insufficient. The District is entitled to know what legal standards were allegedly violated by the October 24, 2017 email (the specific laws and rules implicated) and the full extent of the alleged deprivation that resulted from the District's action (*i.e.*, the records, meetings and opportunities to which Parent was denied access). As written, Concern #1, even when considered in context with the "why" statements that follow it, fails to provide a sufficient description of the nature of the problem and the facts related to the problem.

In Concern #2, Parent alleges "Failure to provide adequate notice and to address legal challenges taken by LOSD." (Amended Complaint at 3.) This statement of concern is similarly followed by several confusing "why" allegations bearing no clear relationship to the statement of concern. These "why" allegations reference changes to legal and custody rights, meetings and email exchanges between parents and school personnel, and the District's assumption of "facts not in evidence" to make "protocol changes."

As written, Concern #2 fails to provide a sufficient description of the nature of the problem and the facts related to the problem. The District is entitled to know the who, the what, the when and the where, as well as a more clearly stated why. For example, of what events and/or circumstances did the District fail to provide notice; of what "facts not in evidence" did

the District allegedly assume; what were the “protocol changes” the District allegedly made; and what were the legal challenges the District allegedly took.

In Concern #3, Parent alleges “LOSD refusal to provide consideration of New Diagnosis.” (Amended Complaint at 4.) This statement is then followed by seven “why” allegations that reference, among other things, a June 29, 2017 updated diagnosis, a September 25, 2017 meeting with school personnel, an email response of October 25, 2017, and a denial of access to records, matters that on their face have little or no relation to the District’s alleged failure to consider a new diagnosis (presumably of Student).

As with the prior two concerns, Concern #3 as written fails to provide a sufficient description of the nature of the problem and the facts related to the problem. It is unclear in what context the District allegedly refused to consider a new diagnosis, and if and/or how that refusal affected Student’s education. The lack of detail and clarity makes it nearly impossible for the District to respond in any substantive way to Parent’s complaint.

Because Parent’s due process complaint fails to meet the requirements of 20 U.S.C. §1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B), the complaint must be dismissed.

As set out above, 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 obtains consent or permission and 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.

RULING AND ORDER

The amended due process complaint filed by Parent on October 31, 2017, assigned DP 17-127 is insufficient and is **DISMISSED**.

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 17th day of November 2017, with copies mailed to:

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