

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

IN THE MATTER OF THE)	RULING ON DISTRICT’S OBJECTION
EDUCATION OF)	TO SUFFICIENCY AND MOTION TO
)	DISMISS AND FINAL ORDER
M.T. AND PORTLAND SCHOOL)	
DISTRICT 1J)	OAH Case No. 2017-ABC-01071
)	Agency Case No. DP 17-130

On October 31, 2017, Parent filed a request for due process hearing (due process complaint) with the Oregon Department of Education (Department). In that complaint, Parent alleged that the school principal took retaliatory acts that placed Student in jeopardy and resulted in denying Student a free and appropriate public education. Parent also alleged the principal denied Student’s constitutional rights by not answering questions posed. On November 1, 2017, the Department referred the complaint to the Office of Administrative Hearings (OAH).

On November 2, 2017, the OAH acknowledged receipt of the complaint, and notified Parent and the Portland School District (District) that it had assigned the case to Senior Administrative Law Judge (ALJ) Alison Greene Webster. On November 7, 2017, the OAH scheduled a prehearing conference for November 30, 2017.

On November 7, 2017, the District, through its attorney Graham M. Hicks submitted an Objection to Sufficiency and Motion to Dismiss challenging to the sufficiency of Parent’s due process complaint. The District asserted that Parent’s due process complaint fails to satisfy the requirements of OAR 581-015-2345 as it does not state facts on which the claim is based with sufficient clarity to allow the District to effectively respond and prepare 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;

* * * * *

(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, 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 impedes both resolution and an effective due process hearing.

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.

In this case, Parent's due process complaint sets out the problem related to Student's education as follows:

Principal Amy Kleiner has taken retaliatory acts placing student [] in physical, emotional and academic jeopardy and consequently, IEP for the 2016-2017 school year denied [student] FAPE.

Additionally, not answering the direct question posed with direct answers, all pressing time-sensitive legal and safety issues, is circumventing the rules, laws that govern and [student's] constitutional rights.

As the District notes in its sufficiency challenge, Parent's complaint fails to state any facts relating to the alleged problem. The complaint does not describe the alleged retaliatory acts or when they allegedly occurred. The complaint does not describe the physical, emotional, and/or academic jeopardy in which student was allegedly placed. The complaint does not state any facts to link the alleged retaliatory acts and the alleged physical, emotional, and academic jeopardy to any failure of Student's 2016-2017 IEP to provide a FAPE. On the second point, the complaint fails to describe the "direct question posed" or explain how the alleged failure to answer circumvented any governing laws or rules or Student's constitutional rights.³ The complete absence of any factual details related to the alleged problem 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 due process complaint filed by Parent on October 31, 2017, assigned DP 17-130 and OAH No. 2017-ABC-01071, is insufficient and is DISMISSED.

The prehearing conference scheduled for November 30, 2017 is CANCELLED.

Alison Greene Webster

Senior Administrative Law Judge
Office of Administrative Hearings

³ Additionally, alleged constitutional violations fall outside the subject matter jurisdiction of a special education due process hearing. See OAR 581-015-2345(1), describing due process hearings as regarding "the identification, evaluation, educational placement of a child, or the provision of a free appropriate education to a child who may be disabled." See also OAR 581-015-2360.

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 9th 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.

CERTIFICATE OF MAILING

On November 9, 2017, I mailed the foregoing **RULING ON DISTRICT'S OBJECTION TO SUFFICIENCY AND MOTION TO DISMISS AND FINAL ORDER** in OAH Case No. 2017-ABC-01071 to the following parties.

By: First Class Mail

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