

(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. 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[.]” And, pursuant to subparagraph (iv), the complaint must include “a proposed resolution of the problem to the extent know and available to the party at the time.”

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).¹ 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).

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. A due process complaint that lacks sufficient factual detail about the nature of the dispute impedes both resolution and an effective due process hearing.

In this case, Parent describes his concerns about Student’s education as follows:

My child is being stigmatized, blamed for [his/her] conditions, discriminated against, has been degraded, humiliated, rejected and emotionally abused after coming forward and making a complaint. [He/she] is currently being retaliated against. False incident reports, false suspensions, false medical screening, and withholding student files, which is compromising [Student’s] right to appropriate education, and mental stability due to intentional harm.

¹ 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.

(Complaint at 1.) As for the proposed resolution, Parent alleges as follows:

Due to the nature of the offense (gross negligence) and the willful misconduct of these educators, our suggested resolution is licenses revoked. They be immediately removed from the school, [so] our child is able to return to school free of retaliation and any further neglect.

(Complaint at 2.)

The District asserts in its sufficiency challenge that Parent's complaint fails to provide any supporting facts relating to the allegations and/or contains vague, generalized statements that do not provide the District with sufficient notice to meaningfully prepare for hearing. Upon review of Parent's complaint, I agree with the District. For the reasons explained below, Parent's complaint does not meet the requirements of OAR 581-015-2345.

The complaint sets out a series of conclusory allegations without any details or explanation regarding the "who, what, when and where." The complaint does not identify the educators who allegedly engaged in the retaliatory or discriminatory conduct, does not describe the particular conduct in which these educators engaged, and does not provide any salient details pertaining to the alleged conduct (such as when, where and how it occurred). The complaint also fails to describe how the alleged misconduct (the stigmatization, blame, discrimination, degradation, rejection, etc.) constitutes a violation of the IDEA or any other relevant special education law. As written, Parent's complaint is much too vague. The lack of specificity makes it nearly impossible for the District to respond in any substantive way to the complaint, either through engaging in mediation or through presentation at hearing.

Similarly, as the District notes, the proposed solution (revocation of unspecified educators' licensure) is legally insufficient because falls outside the scope of a due process hearing under the IDEA. The District has no authority over educators' licensure and the IDEA does not permit an administrative law judge to revoke a state-issued educator's license as a remedy.

In sum, Parent's complaint fails to comply with 20 U.S.C. §1415(b)(6)(A)(ii)(III) 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, and does not set forth a viable remedy or proposed resolution within the realm of the IDEA. Consequently, 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 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 on February 23, 2018, assigned DP 18-107 and OAH Reference No. 2018-ABC-01364 is insufficient and is therefore DISMISSED.

Pursuant to OAR 581-015-2350(3)(B), Parent may submit an amended due process complaint to the Department no later than March 30, 2018.

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 13th day of March, 2018, 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 March 13, 2018 I mailed the foregoing RULING ON DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND FINAL ORDER in OAH Case No. 2018-ABC-01364 to the following parties.

By: First Class Mail

Parent(s) of Student
14992 SE Stark St
Portland OR 97233

Paul Coakley, Superintendent
Centennial School District 28J
18135 SE Brooklyn St
Portland OR 97236

Rich Cohn-lee, Attorney at Law
The Hungerford Law Firm LLP
PO Box 3010
Oregon City OR 97045

BY ELECTRONIC MAIL:

Elliot Field, Legal Specialist
Department of Education
255 Capitol Street NE
Salem, OR 97310-0203

Ryan K Clark
Hearing Coordinator
Office of Administrative Hearings