



identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

(Emphasis added.)

The District also cited to OAR 581-015-2395 which provides, in relevant part:

(1) The parent or guardian of a qualified student with a disability under section 504 may file a written request for a hearing with the State Superintendent of Public Instruction with respect to actions regarding the identification, evaluation, provision of a free appropriate education, or education placement of the student with the disability under Section 504, which the parent or guardian alleges to be in violation of Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, or any amendment thereof. In such event, the Superintendent will conduct a hearing.

(Emphasis added.) Notably, nothing in OAR 581-015-2395 explicitly allows a school district to request a hearing under Section 504. Furthermore, the District has identified no other source of Oregon state law that would allow a District to file a request for hearing under Section 504 under the auspices of the State Superintendent of Public Instruction. Nor has the District cited to any authority that would allow an administrative law judge from the OAH to hear such a case.

The District notes the United States Department of Education's Office for Civil Rights (OCR) has interpreted the federal regulations as allowing a District to request a hearing under Section 504. However, nothing in the authorities cited by the District suggests that the District has the right to file a hearing request in Oregon using the process established for hearings under the IDEA.

For example, in *Letter to Anonymous*, 18 IDELR 230 (OCR, July 5, 1991), the OCR noted that nothing in Section 504 either barred or required IDEA hearing officers from also hearing cases under Section 504. While the letter did not address the specific issue in this case, the letter makes clear that states are not required to use the same hearing process under Section 504 as is available under the IDEA. Furthermore, in an *OCR Senior Staff Memorandum*, 19 IDELR 895 (OCR, May 29, 1992), the OCR asserted that District's *may* use Section 504 hearing procedures when parents refuse to consent to an evaluation of a child but are not required to do so.

What the above authorities make clear is that school districts are not required to utilize Section 504 hearing procedures to overcome parental objections to evaluations and that states are not required to use IDEA hearing procedures to hear such cases. In Oregon, the State Superintendent of Public Instruction has apparently not established a process that would allow a District to file a request for hearing under Section 504.

The District, however, argues that OAR 581-015-2395 can be read as authorizing its request for hearing. The District notes that OAR 581-015-2395(3) provides:

The prehearing and hearing procedures in OAR 581-015-2340 through 581-015-2383 apply to hearings conducted under Section 504 of the Rehabilitation Act.

The District then observes that OAR 581-015-2345(1) allows either a parent or a school district to request a hearing. The problem with the District's argument is that it would render OAR 581-015-2395(1), which specifically allows a parent to request a hearing under Section 504, superfluous. After all, if the right to request a hearing under OAR 581-015-2345 was incorporated into OAR 581-015-2395(1), it would be unnecessary to restate the parent's right, but not the District's, in the latter rule. A more reasonable interpretation of OAR 581-015-2395(3) is that it requires hearings under Section 504 to be conducted using the same procedural safeguards as are available for hearing requests under the IDEA; not that it meant to expand the right to request a hearing beyond the express terms of OAR 581-015-2395.

Oregon law does not allow a District to request a hearing under Section 504 to be conducted by an administrative law judge from the OAH. Because I have no jurisdiction to decide the case, the District's request for hearing must be dismissed.

### **ORDER**

The District's April 28, 2010 request for a due process hearing under Section 504 is dismissed.

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John Mann, 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 9th day of June, 2010 with copies mailed to:

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