

**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 MEDFORD SCHOOL) **SUFFICIENCY CHALLENGE TO**
DISTRICT) **STUDENT'S DUE PROCESS**
) **COMPLAINT AND FINAL ORDER**
)
) Case No. DP 16-108

On or about June 3, 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 Medford School District (the School District) failed to make reasonable modifications in non-academic services policies and practices in violation of OAR 581-015-20270. On June 3, 2016, the Department referred the complaint to the Office of Administrative Hearings (OAH).

On June 3, 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 July 5, 2016.

On June 14, 2016, counsel for the school district, Richard Cohn-Lee, submitted a timely challenge to the sufficiency of Parent's due process complaint. The School District asserted that Parent's due process complaint fails to provide sufficient facts to support the allegations and fails to give the District fair notice of the issues for hearing. The District also asserted that Parent's allegations do not appear to relate to the provision of a free appropriate education to child under the IDEA. That same date, Parent submitted a Response to the District's Motion, asserting that the due process complaint meets the sufficiency requirements and, if not, seeking leave to amend the complaint.

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 completed an Oregon Department of Education form entitled Request for Due Process Hearing (complaint or due process complaint). Parent's complaint complies with the first requirement of 20 U.S.C. §1415(b)(7)(A)(ii) in that it includes the student's name, address and school. However, as set out below, the 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.

As set out above, a parent's request for a due process hearing must provide a description of the nature of the problem of the child and facts relating to the issue or issues caused by the school district's action or inaction. The purpose for such a 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. That information allows the parties to resolve the issues through mediation or to

¹ 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.

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

In the complaint, Parent marked the box to indicate that “the Provision of a Free Appropriate Public Education to your Child” was a concern. The complaint then stated:

Medford School District has failed to make reasonable modifications in non-academic services policies, practices necessary to afford its services, facilities, privileges, advantages or accommodations to students with disabilities that are extended to non-disabled students in violation of OAR 581-015-2070.

District’s failure to make reasonable modifications in its policies, procedures and practices constitutes a pattern and practice of discrimination in violation of 42 U.S.C. §12182(b)(2)(A)(i).³

To meet the due process notice requirement, Parent’s complaint must set forth facts showing that the student is entitled to the protections of the IDEA. Here, Parent’s complaint fails to state any facts to show that Student is entitled to the protections of the IDEA. The complaint does not address how the actions of the School District affected Student. It does not describe any limitations or disabilities that Student may have or explain the factual or legal basis for Student’s alleged entitlement to a free appropriate public education under the IDEA.

The complaint must also describe nature of the problem and the action or inaction of the School District relating to that problem. Parent’s complaint also fails to meet this requirement. The complaint asserts that the School District “failed to make reasonable accommodations in non-academic services,” but does not specify the nature of the services, the accommodations that were or were not made, the individuals involved in the alleged misconduct, and/or when the alleged misconduct occurred. The lack of any specificity with regard to the claimed denial of FAPE makes it very difficult for the School District to respond in any substantive way to Parent’s complaint.

One may surmise, from the proposed solutions set out in Parent’s complaint,⁴ that a disabled student was not selected to a varsity athletic team at South Medford High School; that

³ 42 U.S.C §12182(b)(2)(A)(i), part of the Americans with Disabilities Act (ADA), addresses the prohibition against discrimination on the basis of disability in places of public accommodations.

⁴ In the complaint, Parent’s proposed solutions included the following:

- Modify policies to provide selection criteria to varsity teams in advance of tryouts to ensure varsity teams are chosen from tryouts using objective criteria (end the practice of “coach’s choice.”)
- Provide all instructions; training & game schedules; play books; to student and parents in writing (email).
- Train coaches on their legal obligations to fully incorporate disabled students into athletics (equal participation).

Parent believes the School District did not afford this student an equal opportunity for participation on the team; and that Parent further believes the School District acted in violation of the law in not placing student on the team. However, for the reasons set out above, Parent's due process 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.

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. Parent's request to submit an amended due process complaint to the Oregon Department of Education is granted pursuant to OAR 581-015-2350(3)(B).

ORDER

The due process complaint filed by Parent is insufficient and is **DISMISSED**. The pre-hearing conference scheduled for July 5, 2016 is **CANCELLED**. Parent may submit an amended due process complaint to the Oregon Department of Education.

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 June 2016 with copies mailed to:

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