

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

IN THE MATTER OF:THE ) **ORDER RE: DISTRICT’S MOTION**  
EDUCATION OF ) **FOR DETERMINATION OF**  
 ) **SUFFICIENCY OF REQUEST FOR**  
**STUDENT AND DOUGLAS COUNTY ) HEARING**  
**SCHOOL DISTRICT 4**

OAH Case No. 2017-ABC-00987  
Agency Case No. DP 17-115

On October 5, 2017, Parents filed a Due Process Complaint (complaint or due process complaint) with the Oregon Department of Education (Department). In that complaint, Parent alleged that the Douglas County School District (the District) violated the Individuals with Disabilities Education Act, 20 USC Section 1400 *et seq.* (the IDEA) and Section 504 of the Rehabilitation Act of 1973, 29 USC Section 729 (Section 504). On October 5, 2017, the Department referred the complaint to the Office of Administrative Hearings (OAH), which scheduled a pre-hearing conference for November 8, 2017.

On October 20, 2017, counsel for the District, Joel Hungerford, submitted a timely challenge to the sufficiency of Parent’s due process complaint. With regard to Parents’ third claim for relief as well as Parents’ request for compensatory education and tuition reimbursement, the District asserted that Parent’s due process complaint fails to provide sufficient facts to support the allegations and proposed remedies, and fails to give the District fair notice of the issues for hearing.

**DISCUSSION**

Under Oregon law, students may request due process hearings to challenge a school district’s identification, evaluation, educational placement or provision of a free and appropriate public education to children. Oregon Administrative Rule (OAR) 581-015-2345(1)(a)(B) requires that the due process complaint contain:

- (i) the child’s name and address (or available contact information in the case of a homeless child);
- (ii) 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.

Under OAR 581-015-2345(1)(c), a party may not have a due process hearing until the party files a notice that meets the requirements of subparagraph (A)(ii). A due process complaint is presumed to meet these notice requirements unless it is challenged by the school district. 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. OAR 581-015-2350(2).<sup>1</sup> 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. 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 OAR 581-015-2345 (B)(i) because it includes the student's name, address and school. However, as set out below, the complaint fails to comply with OAR 581-015-2345(1)(a)(B)(iii), because its third claim under Section 504 does not clearly state the type of Section 504 claims being asserted or facts supporting each claim.

The required particulars in due process complaints allow the parties to resolve the issues through mediation or prepare for a due process hearing. A due process complaint that lacks sufficient detail about the nature of the dispute impedes both processes.

The third issue in Parent's complaint states as follows:

Issue 3: The District discriminated against the Student due to his disabilities.

The District violated Section 504 of the Rehabilitation Act of 1973 by failing to provide the Student with reasonable accommodations to meet his/her needs as adequately as the district met the needs of non-disabled students. The District also failed to provide the Student with educational aids and services designed to meet the Student's individual education needs as required under 34 C.F.R. § 104.33 by failing to evaluate him/her in all areas of suspected disability, by illegally secluding him/her from other students and thus failing to place him/her in

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<sup>1</sup> 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.

the least restrictive environment, and by failing to develop an IEP in accordance with the IDEA, for the 2015-2016 and 2016-2017 school years.

Specifically, the District violated Section 504 FAPE regulations that require adherence to certain procedures intended to facilitate provision[s] of a FAPE, including 34 C.F.R. § 194.33, testing and evaluation, 34 C.F.R. § 104.35, and notice to parents of educational plans for their children and access to records. 34 C.F.R. § 104.36. The District denied Student the right to full and equal access to its educational facilities because of his/her disabilities by failing to identify and evaluate Student for the 2015-2016 and 2016-2017 school years, failing to assess and design an education program for Student for the 2015-2016 and 2015-2016 and 2016-2017 school years, and failing to implement Student's IEP for the 2015-2106 and 2016-2017 school years.

Issue 3 appears to contain two legal theories under Section 504. First, Parent appears to be alleging that the District violated Section 504 itself because of Student's disability by failing to provide him/her with meaningful access to public education. Second, Parent appears to be asserting specific violations of the regulations to Section 504. However, the complaint does not adequately separate the two theories, but instead weaves them together. The Complaint needs to be amended to clearly and separately state each specific legal theory it is asserting under Section 504.

The Complaint appears to allege seven separate violations of Section 504 regulations by asserting that the District failed to: 1. Provide educational aids and services; 2. Evaluate in all suspected areas of disabilities. 3. Place Student in the least restrictive environment; 3. Develop an appropriate IEP; 4. Provide required notice to Parents; 5. Provide Parents' access to records; 6. Assess and design an education program for Student during the 2015-2016 and 2016-2017 school years; and 7. Implement Student's IEP during the 2015-2016 and 2016-2017 school years. However, the Complaint states these violations in a conclusory fashion, and does not provide the "who, what, when, where and why" details about these claims. The District cannot respond to such vague allegations that do not indicate what specifically the District purportedly failed to do. The Complaint therefore needs to be amended to provide these required details.

With regard to remedies, Parents are only required to state proposed resolutions to the extent known and available to Parents when they filed the complaint. Here, the complaint seeks "compensatory damages in an amount to be determined." Parents allege no specifics including the school year(s) for which they seek compensatory damages or the type of compensatory damages. The Complaint must be amended to include all known details about the compensatory damages.

Similarly, the Complaint seeks under Proposed Remedy Compensatory Education and Tuition Reimbursement 2(a) (Request 2(a)):

Tuition and/or tuition reimbursement for the Student at Bridgeway School, or any other public or private school, including any online school, charter school, and institutions of higher learning for the equivalent of the time

the Student was unable to attend general education classes. If the Student is not able to find an appropriate class, course or program, the District shall provide reimbursement for 300 hours of tutoring in the subjects by a qualified, private tutor, accredited in the area of study and approved by Parents.

The Complaint does not identify the school years for which Parents seek tuition reimbursement, the learning institutions where Student has received instruction and for which Parents seek reimbursement, or the types of classes for which Parents are seeking reimbursement. The Complaint needs to be amended to provide more detail about the request for tuition reimbursement.

Thus, for the reasons set out above, neither Issue 3 nor Parents' Request 2(a) for compensatory education and tuition reimbursement (Request 2(a) meet the requirements of OAR 581-015-2345(1)(a)(B)(iii) Accordingly, that issue and request 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 regarding Issue 3 and Request 2(a) to the Oregon Department of Education is granted pursuant to OAR 581-015-2350(3)(B).

## ORDER

The District's sufficiency challenge to Parents' due process complaint is **GRANTED** as to Parents' Issue 3 and Request 2(a). Parents' Issue 3 and Request 2(a) are **DISMISSED**. The balance of the due process complaint remains in effect. Parents may submit to the Oregon Department of Education an amended due process complaint to cure the defects in Issue 3 and Request 2(a) no later than November 8, 2017.

D. McGorin

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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 31st day of October, 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 October 31, 2017, I mailed the foregoing **ORDER RE: DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY OF REQUEST FOR HEARING** in OAH Case No. 2017-ABC-00987 to the following parties.

By: First Class Mail

Parent(s) of Student  
908 Valley Rd  
Roseburg OR 97471

Melissa Wischerath, Attorney at Law  
Law Office Of M.d. Wischerath  
PO Box 12263  
Eugene OR 97440

Gerry Washburn, Superintendent  
Douglas County School District 4  
1419 NW Valley View Dr  
Roseburg OR 97471

Joel Hungerford, Attorney at Law  
PO Box 3010  
Oregon City OR 97045

**BY ELECTRONIC MAIL:**

Mike Franklin, Legal Specialist  
Department of Education  
255 Capitol Street NE  
Salem, OR 97310-0203

Alesia Vella for Lucy M Garcia  
Hearing Coordinator  
Office of Administrative Hearings