

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

IN THE MATTER OF THE) **RULING ON DISTRICT’S MOTION FOR**
EDUCATION OF) **DETERMINATION OF SUFFICIENCY**
) **OF REQUEST FOR HEARING**
STUDENT AND BROOKINGS)
HARBOR SCHOOL DISTRICT) OAH Case No. 2017-ABC-01013
) Agency Case No. DP 17-116
)

On October 17, 2017, Parent, on behalf of Student, filed a request for a due process hearing (hearing request) with the Oregon Department of Education (Department). In that complaint, Parent alleged that the Brookings Harbor School District (the District) violated sections of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C § 1400 *et seq.* and the corresponding administrative rules. On October 17, 2017, the Department referred the complaint to the Office of Administrative Hearings (OAH), which scheduled a pre-hearing conference for November 21, 2017. The OAH assigned Senior Administrative Law Judge (ALJ) Joe L. Allen to preside at hearing.

On October 27, 2017, counsel for the District, Joel Hungerford, submitted a challenge to the sufficiency of Parent’s hearing request (motion). In the challenge, the District asserts that portions of Parent’s request for hearing fail to meet the requirements of OAR 581-015-2345. On November 1, 2017, counsel for Parent, Joel Greenberg filed a six page letter in response to the District’s motion.

DISCUSSION

Under Oregon law, parents and/or 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 (FAPE) to students who qualify for specially designed instruction and/ or related services under the IDEA.

The Department of Education has promulgated administrative rules that mirror the federal regulations applicable to hearings under the IDEA. OAR 581-015-2345 identifies requirements for hearing requests and responses to such requests under the IDEA in Oregon and provides, in relevant part:

- (1) Request for Hearing:
 - (a) Parent Requests for a Due Process Hearing:
 - (A) A parent may request a due process hearing in accordance with subsection(3) if the parent does not agree with the identification, evaluation, educational

placement of a child, or the provision of a free appropriate education to a child who may be disabled.

(B) The parent, or the attorney representing the child, must provide notice to the school district and to the Department when requesting a hearing. The notice (which remains confidential) must, include:

(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 the proposed or refused initiation or change, including facts relating to the problem; and

(iv) A proposed resolution of the problem to the extent known and available to the party at the time.

OAR 581-015-2350 provides for challenges to the sufficiency of a hearing request and provides:

(1) A written request for hearing will be deemed sufficient unless the party receiving the request notifies the administrative law judge and the other party in writing, within 15 days of receipt of the hearing request, that the receiving party believes the notice does not meet the requirements of OAR 581-015-2345.

(2) 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.

(3) A party may amend its hearing request only if:

(A) The other party consents in writing to the amendment and is given the opportunity to resolve the hearing request through a resolution meeting; or

(B) The administrative law judge grants permission, except that this permission may only be granted at any time not later than five days before a due process hearing occurs.

(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.

When, as here, a school district challenges the request for hearing, the ALJ must determine from the face of the hearing request whether it meets the notice requirements set forth in OAR 581-015-2345. OAR 581-015-2350(2). If the hearing request meets the requirements of the administrative rules, the matter will proceed to hearing. Conversely, if the hearing request fails to meet the basic requirements, the ALJ must dismiss the hearing request. OAR 581-015-02350(3).

As discussed more fully below, Parent's request for a due process hearing 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 identified above, Parent's request for a due process hearing must provide a description of the nature of the problem of Student and facts relating to the issue or issues caused by the District's action or inaction. The purpose for such a notice requirement is to give the District the "who, what, when, where and why" details about the reasons Parent is requesting a hearing. That information allows the parties to resolve the issues through mediation or to fully prepare for a due process hearing. A due process hearing request that lacks sufficient detail about the nature of the dispute hinders resolution of the dispute and impedes an effective due process hearing should mediation prove unsuccessful.

In this case, counsel for Parent filed a 20 page request for hearing, including approximately 13 pages of background facts. Despite the lengthy nature of the request for hearing, I agree that most of the allegations are stated with insufficient detail either to allow the parties to resolve this matter through mediation or to allow the District to prepare for a due process hearing.

Student's first allegation alleges a failure by the District to consider or address Student's need for Assistive Technology ("AT"). Hearing Request at 14. However, the hearing request does not set forth the specific AT Student needed and was not provided nor how Student's needs were either not considered or inadequately considered at a particular IEP meeting.

In addition, Parent's hearing request fails to provide any factual information for the time period covered in that allegation. The hearing request contains vague indications that the District's failures began in May 2016 IEP meeting. However, as the District points out, the hearing request's lengthy narrative does not discuss any factual information prior to November 15, 2016. Thus, the hearing request fails to provide the requisite factual information necessary (who, what, when, etc.) to sufficiently state a claim.

Likewise, Student's second allegation, made up of subparts (a) through (d) lacks sufficient information, with regard to at least two subparts, to meet the requirements set forth in the IDEA and the relevant administrative rules.

First, Student's subpart (b) – that the District allegedly "failed to honor Parent and attorney requests to provide them with copies of materials that were to be discussed during the same meetings in a manner that would allow Parent and attorney to review those materials before the meetings" Hearing Request at 14 – does not contain the necessary factual information because, as stated by the District, the request for hearing lacks any reference which document(s)

should have been provided in advance on the meeting, which document(s) were not provided prior to the meeting, or whether the document(s) were ultimately provided at an IEP meeting. Accordingly, it would difficult, if not impossible, for the District to respond to this allegation by demonstrating that an unidentified document was actually provided prior to the IEP meeting or event discussed at the meeting

By the same token, Student's subpart (c) of the second allegation— that the District “failed to include the remotely accessed psychologist who it intended to offer as the source of a needed review of the behavioral progress and supports that [Student] would require to attend a full day of school” Hearing Request at 14 – fails to identify which IEP meeting the psychologist should have attended. It is not for the District to speculate as to the limitations of the allegation with regard to the date or dates of IEP meetings at which the failure occurred.

The fourth allegation in the request for hearing asserts that the District failed to provide prior written notices (“PWNs”) when the District either changed Student’s educational placement or denied Parent’s request to change his/her educational placement. Hearing Request at 15. Parent’s request for hearing fails to list the alleged dates Parent believes a PWN should have been issued by the District. I agree with the District that it is difficult, if not impossible, to respond to this allegation without being put on notice of when, specifically, the District allegedly should have provided a PWN. Accordingly, this allegation fails to meet the requirements of OAR 581-015-2345.

Student’s fifth allegation asserts a failure, by the District, to provide the least restrictive environment (LRE) for Student. This allegation also claims the District failed to provide additional supplementary aids and services that would allow Student to attend a full school day and, instead, reduced Student’s school day. Hearing Request at 15. In response, the District argues that the request for hearing “fails to set forth adequate factual information, such as what placement Student believes would have been LRE or what Supplementary Aids and Services should have been provided and were not.” Motion at 6. I agree. As the District points out in its motion, “it may be that the District is open to providing the very Supplementary Aid or Service that Student wants, but it is impossible to tell based on how the Complaint is currently written.” *Id.* Accordingly, the allegation fails to identify sufficient facts relating to the problem as required by OAR 581-015-2345(1)(a)(B)(iii).

Finally, Parent’s sixth allegation argues is that the District should have conducted a manifestation determination or a functional behavior assessment (FBA) prior to removing Student from school for more than 10 days. Hearing Request at 15. Nonetheless, Parent’s request for hearing fails to include facts identifying the when the manifestation determination or and FBA should have been conducted, or even when the alleged removal occurred. Accordingly, this allegation fails to satisfy the requirements of OAR 581-015-2345.

While counsel for Parent did submit a significant amount of clarification in his response to the motion, it is the request for hearing that must, on its face, meet the requirements of OAR 581-015-2345.

Pursuant to OAR 581-015-2350(3), Parent may amend a hearing request only if: (A) the

District 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. While counsel for Parent filed a letter in response to the District's motion, Parent made no request for leave to amend the due process complaint if it was determined to be insufficient. Nevertheless, pursuant to OAR 581-015-2350(3), I have granted Parent leave to amend if he/she deems it appropriate.

RULING and ORDER

The District's Motion for Determination of Sufficiency of Request for Hearing is **GRANTED**. The following alleged violations in Parent's due process complaint are dismissed: Allegations 1, 2(b) and(c), 4, 5, and 6. Parent may elect to proceed to hearing on the remaining allegations, or amend the due process complaint.

If Parent elects to amend the complaint, the amendment must be filed no later than November 17, 2017. If Parent elects to file an amended due process complaint, all relevant timelines will begin anew as of the date of filing.

Joe L. Allen

Senior Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF MAILING

On November 7, 2017 I mailed the foregoing RULING ON DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY OF REQUEST FOR HEARING in OAH Case No. 2017-ABC-01013 to the following parties.

By: First Class Mail

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