

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

IN THE MATTER OF:) **PROPOSED ORDER RE: DISTRICT’S**
) **MOTION FOR DETERMINATION OF**
JL AND CORVALLIS SCHOOL) **SUFFICIENCY OF REQUEST FOR**
DISTRICT 509J) **HEARING**
)
) OAH Case No. 2019-ABC-03384
) Agency Case No. 19-116

HISTORY OF THE CASE

On December 13, 2019, Parent filed a request for a due process hearing (hearing request) with the Oregon Department of Education (ODE). In the hearing request, Parent alleged that the Corvallis School District (the District) violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.* (Section 504), the Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*, and Oregon Administrative Rules (OAR) 581-015-2000 to 581-015-2930 and 581-022-2320.

The Department referred the hearing request to the Office of Administrative Hearings (OAH) on December 13, 2019. The OAH assigned administrative law judge (ALJ) D. McGorin to preside over the hearing, and scheduled a prehearing conference for January 13, 2019.

On December 30, 2019, counsel for the District, Joel E. Hungerford, submitted a timely challenge to the sufficiency of Parent’s due process complaint. In the challenge, the District asserted that Parent’s hearing request fails to meet the requirements of OAR 581-015-2345.

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 ADEA.

The Department has promulgated administrative rules mirroring IDEA federal regulations. Oregon Administrative Rule (OAR) 581-015-2345(1)(a)(B) requires that hearing requests 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 hearing request 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 hearing request, the ALJ must determine from the face of the hearing request whether or not it meets the notice requirements. 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. OAR 581-015-02350(3).

Here, Parent's hearing request 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 hearing request fails to comply with OAR 581-015-2345(1)(a)(B)(iii), because it does not provide a sufficient description of the nature of the problem or state facts relating to the problem.

The pleading requirements for hearing requests allow the parties to resolve the issues through mediation or prepare for a due process hearing. A hearing request that lacks sufficient detail about the nature of the dispute impedes both processes.

Parent's hearing request contains five pages of facts that purport to cover three school years: 2015-2016, 2016-2017, and 2017-2018. The hearing request has another section labelled "Claims." The claims section contains headings for two claims under the IDEA (A1 and A2) and two claims under Section 504 and the ADA (B1 and B2). A final section covers proposed remedies.

Although the hearing request supposedly contain four claims, it is unclear whether Parent intends to assert a variety of sub-claims under each of the four claims. For example, ADEA

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.

claim A1 has a heading stating: “District failed to appropriately evaluate Student.” However, the paragraphs following that heading appear to be attempting to state two separate claims: failure to evaluate Student for eligibility for special education and related services, and failure to comply with child find duties.²

Similarly, the heading for Section 504 and ADA claim B1 asserts that the District failed to appropriately evaluate Student’s mental health or emotional needs. However, in paragraphs under that heading, the hearing request asserts failure to develop an individualized education plan (IEP).³

Additionally, the heading for Section 504 and ADA claim B2 alleges discrimination by failing to provide Student with educational aids, accommodations, and services. However, the paragraphs following the heading contend a failure to evaluate Student for special education eligibility. Moreover, it is unclear whether claims B1 and B2 are asserted only under Section 504 or whether Parent is asserting a separate ADA claim.

The hearing request needs to be amended to clearly and separately state each specific legal theory that Parent is asserting under each law. Only then can the parties have a meaningful mediation and/or prepare for a due process hearing.

In addition to the uncertainty about Parent’s claims, it is unclear which of the five pages of facts pertain to each of the claims. Thus, although the factual section spans four school years, the hearing request does not specify in what school years each of the violations supposedly occurred or who was responsible for the violations. Instead, the hearing request states the violations in a conclusory fashion, and does not provide the “who, what, when, where and why” details about the claims. The District cannot respond to such vague allegations that do not indicate what specifically the District purportedly failed to do. And, although the five pages of facts list some incidents of wrongdoing, the District cannot be expected to connect these wrongdoings to each of the claims that Parent asserts. The hearing request therefore needs to be amended to provide these required details and connections.

With regard to remedies, Parent is only required to state proposed resolutions to the extent known and available to her when she filed the hearing request. Here, the hearing seeks “compensatory educational remedy as appropriate.”⁴ However, Parent alleges no specifics including the school year(s) for which she seeks compensatory damages or the type of compensatory damages. The Complaint must be amended to include all known details about the compensatory damages.

The hearing request is equally silent about Section 504 accommodations sought by Parent. The hearing request asks the ALJ to order the District to provide “all accommodations to Student as required in [his/her] § 504 Plan.”⁵ However, the hearing request does not specify which accommodations are sought or how the District must implement them.

² Parent’s hearing request at pages 6-7, paragraphs 44-47.

³ Parent’s hearing request at pages 9-10, paragraphs 60-64.

⁴ Parent’s hearing request at page 11, paragraph 73.

⁵ Parent’s hearing request at page 11, paragraph 75.

Moreover, Parent seeks tutoring for Student for each subject in which he/she earned a D or F. However, the hearing request does not list the school years or subjects in question or why the ALJ should order this remedy.⁶ The same is true of Parent's request for specially designed instruction in self-advocacy skills and anxiety reduction.⁷

Parent requests reimbursement for a broad array of "educational expenses" incurred by Parent for Student between November 2016 and the filing of the hearing request.⁸ However, Parent does not list or describe the specific expenses that she seeks.

The Complaint also does not specify the basis for Parent's request for compensation for mental and emotional harm suffered by "the denial of reasonable accommodations, discrimination and bullying by certain staff during Student's time in Corvallis School District."⁹ It is also unclear whether the bullying allegation, first mentioned in the remedies section, is part of claims A1, A2, B1 or B3, or whether it is a separate claim.

Finally, Parent seeks reimbursement for "lost wages" for herself.¹⁰ The hearing request states that the wages are to compensate Parent for time spent supervising Student during school hours and for time transporting Student to or from school or therapy. However, Parent does not indicate why she believes she is entitled to these wages or for what period of time she seeks reimbursement.

Based on the foregoing reasons, Parent's hearing request does not meet the requirements of OAR 581-015-2345(1)(a)(B)(iii). Accordingly, the hearing request will be dismissed and will not proceed to a hearing.

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. Under 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.

⁶ Parent's hearing request at page 11, paragraph 76.

⁷ Parent's hearing request at page 11, paragraph 76.

⁸ Parent's hearing request at page 12, paragraph 79.

⁹ Parent's hearing request at page 12, paragraph 81.

¹⁰ Parent's hearing request at page 12, paragraph 80.

ORDER

The District's sufficiency challenge to Parent's due process complaint is **GRANTED**. Parent's due process complaint filed by Parent on December 13, 2019, and designated as DP 19-116, is **DISMISSED** without prejudice. The prehearing conference scheduled for January 13, 2020 is cancelled.

Pursuant to OAR 581-015-2350(3)(B), Parent may submit an amended due process complaint to the Department no later than February 6, 2020.

D. McGorin

Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE

On December 30, 2019, I mailed the foregoing NOTICE OF PREHEARING CONFERENCE in OAH Case No. 2019-ABC-03384.

BY CERTIFIED MAIL:

Parent(s) of Student
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Office of Administrative Hearings

ORS 183.413 Notice of Hearing-Notice to Members of the Armed Forces

A member of the Armed Forces (Army, Navy, Air Force, Marines, Coast Guard and National Guard) may be subject to the protection of the Servicemembers' Civil Relief Act (SCRA) 50 USC §§ 3901 et seq. as amended. The SCRA provides certain protections to service members and their dependents, if specific conditions are met. If you qualify under the SCRA, you may be entitled to have the matter pending before the Office of Administrative Hearings (OAH) delayed (stayed) due to your military service. The SCRA also provides other protections. Service members may contact the Oregon State Bar toll-free inside Oregon at (800)452-8260 or (503) 620-0222 or the Oregon Military Department at (503) 584-3980 for more information. The United States Armed Forces Legal Assistance Legal Services Locator website may be accessed at legalassistance.law.af.mil.

In order to qualify for the protections of the SCRA, a service member must show that he/she is: (1) an active duty service member; or (2) a member of the reserve component activated to serve in active federal service; or (3) a National Guard service member under Title 10 of the US Code; or (4) a National Guard service member under Title 32 of the US Code called to active duty for 30 days or more pursuant to a contingency mission specified by the President or Secretary of Defense or serving on Annual Training orders. Some provisions of the SCRA also cover dependents of qualifying service members who rely on the service member for at least half of their income. The SCRA continues to provide some protections for a short period of time after service is concluded. Additional protections may be available under ORS 399.238 if you are a member of the Oregon National Guard. It is important that you be aware of your dates of service at the time you contact the OAH and at hearing.

If you think you may qualify under one of the above criteria it is important that you notify the OAH, and the agency that initiated the action, prior to your hearing date so that steps can be taken to ensure that your rights under the SCRA are followed. You may also contact your Judge Advocate General at the installation where or near where you serve or your chain of command for more information regarding your rights under the SCRA.

Notice to Veterans of the Armed Forces

In 2011, the Oregon Legislature enacted Senate Bill 241 (SB 241). The purpose of SB 241 is for state agencies to assist in informing veterans of access to benefits. The Oregon Department of Veteran's Affairs has published a 40-page comprehensive benefit magazine containing state and federal veteran benefits information including: the disability claims process; contact information for veterans services offices; how to access health care; veteran transportation; veteran trauma education; long term care options; dependent and survivor benefits; burial benefits; education options; home loan information; taxation deferral and exemptions; employment resources and preferences; auto adaptive and clothing allowances; IDs, DMV license plates; medals and records; homelessness resources, veterans court's information and recreation benefits and memorials. You can read the entire magazine online at:

<http://www.oregon.gov/odva/Documents/Veterans%20Benefits%20Magazine%202012%20sm.pdf>

You can obtain other information regarding your benefits at:

<http://www.oregon.gov/ODVA/pages/index.aspx>

Comunicado de Audiencia – Comunicación a Miembros de las Fuerzas Armadas

Los miembros de las Fuerzas Armadas (Ejército, Marina, Aeronáutica, Infantería de Marina, Guardia Costera y Guardia Nacional) podrán aspirar a la protección acordada por “Servicemembers’ Civil Relief Act” (SCRA) (Ley de Asistencia Civil a miembros del Servicio) 50 USC §§ 3901 y normas relacionadas, conforme a enmienda. El SCRA otorga protecciones a miembros del servicio y a las personas a su cargo que reúnan requisitos específicos. Quienes reúnan los requisitos del SCRA podrán someter su pedido ante el “Office of Administrative Hearings” (OAH) (Oficina de Audiencias Administrativas) solicitando su diferimiento por causa de servicio militar. El SCRA suministra, además, otras protecciones. Para más informaciones, los miembros del servicio podrán contactar el “Oregon State Bar” desde el territorio del Estado a través de su línea gratuita, llamando al (800) 452-8260 / (503) 620-0222 ó al Oregon Military Department, llamando al (503) 584-3980. Podrá accederse al “Legal Assistance Legal Services Locator” de las Fuerzas Armadas de los EEUU a través de: legalassistance.law.af.mil

Para aspirar a las protecciones del SCRA, el miembro del servicio deberá presentar evidencias de ser: miembro activo del servicio, o (2) miembro del módulo de reserva activado para prestar servicios en el servicio federal activo; o (3) miembro del servicio de la Guardia Nacional, de conformidad al Title (Título) 10 del US Code (Código de los EEUU) o (4) miembro del servicio de la Guardia Nacional de acuerdo al Title (Título) 32 del US Code (Código de los EEUU) llamado para cumplir servicios activos durante 30 días o más en cumplimiento de misiones eventuales especificadas por el Presidente o la Secretaría de Defensa o en servicio de disposiciones de Entrenamiento Anual. Algunas de las provisiones del SCRA cubren también a las personas a cargo de los miembros del servicio que tengan derecho y que representen por lo menos la mitad de su ingreso. El SCRA continuará proporcionando algunas protecciones por un breve periodo de tiempo una vez que el servicio haya sido completado. Los miembros del “Oregon National Guard” podrán contar con protecciones adicionales, de conformidad con ORS 399.238. Es importante que conozca las fechas de servicios, tanto en el momento en que contacte el OAH, como en el momento de la audiencia.

De considerarse encuadrado dentro de los requisitos mencionados, es importante que, con anterioridad a la fecha de audiencia, notifique al OAH y a la agencia en la que inició la acción, de manera de poder tomarse los recaudos necesarios para asegurar que los derechos otorgados por SCRA sean tenidos en consideración. En relación a los derechos mencionados en SCRA y, para mayor información, podrá también contactar al “Judge Advocate General” de la sede en la que presta servicios, a una cercana a ésta, o a su cadena de comandos.

Aviso a los veteranos de las fuerzas armadas

En 2011, el Cuerpo Legislativo de Oregon promulgó el Proyecto de Ley del Senado número 241 (SB 241). El propósito del SB 241 es que las agencias estatales ayuden a informar a los veteranos sobre el acceso a beneficios. El Departamento de Asuntos para Veteranos de Oregon ha publicado una completa revista de 40 páginas sobre los beneficios, la cual contiene información sobre beneficios estatales y federales para veteranos incluyendo: el proceso de reclamación por discapacidad; información de contacto de las oficinas de servicios para veteranos; cómo obtener acceso a atención médica; transporte para veteranos; educación sobre trauma para veteranos; opciones de atención médica a largo plazo; beneficios para dependientes y sobrevivientes; beneficios funerarios; opciones educativas; información de préstamos para vivienda; aplazamiento de impuestos y exenciones; recursos y preferencias laborales; adaptaciones para vehículos y asignaciones para ropa; identificaciones, placas DMV; medallas y registros; recursos de vivienda, información legal para veteranos y beneficios recreativos y de monumentos. Puede leer la revista completa en línea en:

<http://www.oregon.gov/odva/Documents/Veterans%20Benefits%20Magazine%202012%20sm.pdf>

Usted puede obtener más información sobre sus beneficios en:

<http://www.oregon.gov/ODVA/pages/index.aspx>



Oregon

Kate Brown, Governor

Office of Administrative Hearings

PO Box 14020
Salem OR 97309-4020
(503) 947-1515
FAX (503) 947-1503
TTY: 1-800-735-1232

This concerns your hearing. If you do not understand the enclosed important document, please IMMEDIATELY contact the Office of Administrative Hearings at 1-800-311-3394.

Spanish:

Esto concierne a su audiencia. Si no entiende el importante documento adjunto, por favor comuníquese INMEDIATAMENTE con la Oficina de Audiencias Administrativas (Office of Administrative Hearings) llamando al 1-800-311-3394.

Vietnamese:

Tài liệu này liên quan đến phiên điều giải của quý vị. Nếu quý vị không hiểu rõ hồ sơ quan trọng đính kèm, xin vui lòng liên lạc NGAY với Văn Phòng Điều Giải Hành Chánh (Office of Administrative Hearings) số 1-800-311-3394.

Russian:

Этот документ имеет отношение к Вашему слушанию и является важным. Если Вы не понимаете приложенный документ, пожалуйста, НЕМЕДЛЕННО свяжитесь с Управлением административных слушаний (Office of Administrative Hearings) по телефону 1-800-311-3394.

Chinese:

隨附重要文件，相關您的聽證一事。如果您不理解這些文件的內容，請立即與行政聽證處 (Office of Administrative Hearings) 聯絡，電話號碼是1-800-311-3394。

Korean:

이것은 귀하의 심의회에 관계되는 서류입니다. 동봉한 주요 서류를 이해하지 못하시면 즉시 심의회 행정실(Office of Administrative Hearings, 1-800-311-3394) 로 연락하시기 바랍니다.

Romanian:

Aceasta se referă la audiența dumneavoastră. Dacă nu înțelegeți documentul important inclus, vă rugăm să contactați IMEDIAT Biroul de Audiențe Administrative (Office of Administrative Hearings) la 1-800-311-3394.

Laotian:

ນີ້ແມ່ນກ່ຽວກັບອຸທອນຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈເອກະສານສໍາຄັນທີ່ແນບມາພ້ອມນີ້, ກະລຸນາຕິດຕໍ່ກັບຫ້ອງການບໍລິຫານການອຸທອນທັນທີ (Office of Administrative Hearing) ຕາມເລກໂທ 1-800-311-3394

Arabic:

يتعلق هذا الإشعار بالجلسة الإدارية التي حددت لك. إذا تعذر عليك فهم الوثيقة المرفقة، نرجوك الاتصال في الحال بمكتب الجلسات الإدارية (office of Administrative Hearings) بالرقم التالي 1-800-311-3394.

Cambodian:

រឿងក្តីនេះស្តីពីបញ្ហាសវនាការគំរូរបស់អ្នក ។ បើអ្នកមិនយល់ពីឯកសារសំខាន់ដែលគេផ្ញើមកជាមួយទេ សូមទាក់ទងមក មន្ត្រីនៅការិយាល័យសវនាការផ្នែករដ្ឋបាល (Office of Administrative Hearings) ភ្លាមៗ តាមលេខ 1-800-311-3394