

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

IN THE MATTER OF:THE EDUCATION OF L.H. AND ESTACADA SCHOOL DISTRICT 108)))))))	RULING ON DISTRICT’S MOTION FOR DETERMINATION OF SUFFICIENCY AND FINAL ORDER OF DISMISSAL OAH Case No. 2020-ABC-03556 Agency Case No. DP 20-103
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HISTORY OF THE CASE

On February 11, 2020, Parent of Student filed a request for a due process hearing with the Oregon Department of Education (Department) pursuant to OAR 581-015-2395. In that complaint, Parent raised concerns involving the identification, evaluation, educational placement and the provision of a free appropriate education to a student with a disability under Section 504 of the Rehabilitation Act and Americans with Disabilities Act (Section 504). The Department referred the complaint to the Office of Administrative Hearings (OAH).

On February 26, 2020, the District, through its attorney Joel Hungerford, submitted an email message to the OAH challenging the sufficiency of Parent’s due process complaint pursuant to OAR 581-015-2350. The District asserted that Parent’s complaint fails to satisfy the requirements of OAR 581-015-2345(1) as it failed to provide a sufficient 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. The OAH assigned this matter to Chief Administrative Law Judge (ALJ) John Mann for purposes of ruling on the District’s sufficiency motion.

DISCUSSION

Parent filed the complaint pursuant to OAR 581-015-2395, the process for requesting a hearing under Section 504. Pursuant to OAR 581-015-2395(3), the prehearing and hearing procedures in OAR 581-015-2340 through 581-015-2383 (the procedural rules for due process complaints under the Individuals with Disabilities Education Act) also apply to hearings conducted under Section 504 of the Rehabilitation Act.

OAR 581-015-2345(1)(a)(B) sets out the notice requirements for a due process complaint under Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (IDEA) as well as for a hearing request under Section 504. The rule requires a complaint to include the following:

- (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.

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 set out above. However, a due process complaint is presumed to meet these notice requirements unless it is challenged by the school district. OAR 581-015-2350(1).

Accordingly, when a school district challenges the sufficiency of a due process or Section 504 complaint, the ALJ must determine from the face of the hearing request whether or not the complaint 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).

The purpose for the notice requirements set out in OAR 581-015-2345(1)(a)(B)(iii) is to give the other side the necessary information to prepare for the hearing and/or to pursue resolution of the complaint. The absence of such detailed information inhibits the ability of the opposing party to understand the nature of the complaint and what, if any, steps can be taken to resolve it. A Section 504 complaint that lacks sufficient factual detail about the nature of the complaint therefore prevents an efficient hearing and can also make informal resolution discussions less productive.

In this case, for the reasons set out below, the District's sufficiency motion has merit. Parent's request for a hearing under Section 504 lacks sufficient information and fails to comply with the requirements of OAR 581-015-2345(1)(a)(B)(iii).

As an initial matter, as the District agrees that the complaint includes the address of the residence of the Student, the name of the school that Student attends, and a proposed resolution of the problem as required by OAR 581-015-2345(1)(a)(B)(i)(ii) and (iv).

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.

However, as the District correctly observes, the complaint does not lay out any specific detail about how the District is alleged to have violated Section 504. Parent filed the complaint on a Department of Education form. Section 4 of the form is labeled “Concerns” and instructs parties to “Describe the IDEA violation and the specific facts that relate to that violation.”² Underneath the pre-printed paragraph, Parent checked four boxes to indicate that Parent was alleging violations related to the identification, evaluation, educational placement and the provision of a free appropriate education of Student. In lines below those boxes, Parent wrote “Failure to Implement 504 Plan. Denied FAPE.” Parents did not include any additional information in this section.

In a section of the form labeled “Proposed Solution,” Parent suggested that there should be an investigation of the District’s policies, practices and procedures regarding a student that transfers into the District with a 504 plan, and a “check and balance to ensure these children are not missed.” Parent also wrote “Please see Attached,” an apparent reference to a complaint that Parent filed directly with the District. That complaint, while extremely detailed, includes allegations that do not clearly relate to Section 504, including allegations of alleged violations of the IDEA, and acts of alleged harassment, bullying and intimidation. Despite the amount of detail, however, it is not clear from this document which conduct forms the basis of Parent’s request for hearing under Section 504. Notably, in the due process hearing complaint, Parent referred to this document only with regard to proposed solutions. It is therefore unclear what, if any, portion of the narrative that Parent asserts should be addressed as a Section 504 violation for purposes of the hearing.

Because the description of the problem that gave rise to the complaint is unclear, the complaint fails to meet the requirements of OAR 581-015-2345(1)(a)(B) and must be dismissed.

Nevertheless, the document filed with the District does contain a number of serious allegations that may well form the basis of a Section 504 complaint. As discussed 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. In light of what appears to be allegations that could form the basis of a valid complaint under Section 504, I will grant Parent permission to file an amended hearing request in accordance with the notice requirements of OAR 581-015-2345(1)(a)(B) if Parent wishes to do so.

RULING AND ORDER

The complaint filed by Parent on February 11, 2020 is insufficient and DISMISSED.

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² Although the form refers to an IDEA violation, Parents have not alleged a violation of the IDEA.

Pursuant to OAR 581-015-2350(3)(B), Parent may submit an amended complaint to the Department no later than March 30, 2020. The timelines for the resolution session and resolution period begin again with the timely filing of the permitted amended hearing request.

John Mann

Chief 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 3rd day of March, 2020, with copies mailed to:

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

CERTIFICATE OF MAILING

On March 3, 2020 I mailed the foregoing RULING ON DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY AND FINAL ORDER OF DISMISSAL in OAH Case No. 2020-ABC-03556 to the following parties.

By: Certified Mail

Parent(s) of Student
24496 SE Filbert Rd
Eagle Creek OR 97022

Joel Hungerford, Attorney at Law
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Oregon City OR 97045

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BY ELECTRONIC MAIL:

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Department of Education
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Salem, OR 97310-0203

Lucy M Garcia
Hearing Coordinator
Office of Administrative Hearings