

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
SUPERINTENDENT OF PUBLIC INSTRUCTION**

IN THE MATTER OF THE EDUCATION OF) **RULING ON DISTRICT'S OBJECTION**
) **TO SUFFICIENCY OF REQUEST**
)
Student and Beaverton School District) Case No. DP 11-123
)
)

On August 25, 2011, Parent filed a request for a due process hearing with the Beaverton School District (the District.) On September 7, 2011, the District, through its counsel Graham Hicks, filed an Objection to Sufficiency of the Hearing Request.

Section 581-015-2350(1) of the Oregon Administrative Rules (OAR) provides that a due process complaint notice "shall be deemed to be sufficient unless the party receiving the notice notifies the Administrative Law Judge (ALJ) and the other party in writing that the receiving party believes the notice has not met the requirements of OAR 581-015-2345." The receiving party, in this case the District, has 15 days from when the due process complaint notice is received to make such a written objection to the sufficiency of the due process notice. OAR 581-015-2350(1).

In this case, the District has filed a timely objection to the sufficiency of Parent's hearing request on September 7, 2011. OAR 581-015-2350(2) requires the ALJ to make a determination as to the sufficiency of the notice within five days after the receiving party files an objection and to immediately notify the parties of the decision in writing. Unfortunately, that five day response deadline was not met in this case. However, a party is not entitled to a hearing if the party has not first filed a notice that meets specific criteria set forth in the statute and administrative rules. 20 USC §1415(b)(7)(B) and OAR 581-015-2345(1)(c). Thus, despite the failure to provide a response to the motion within the five day period, I must nevertheless determine whether the parents' request meets the minimum requirements of OAR 581-015-2345(1)(a)(B)(iii), which require the due process complaint notice to include the following:

- (i) The name of the child 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 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.

The above administrative rule does not explain the necessary level of specificity that a due process complaint notice must contain. However, the rule requires that the notice describe

the nature of the problem “relating to such proposed initiation or change, including facts relating to the problem.” It is not sufficient to describe general allegations about a District’s failure or refusal when there are few accompanying facts to describe the nature of the exact problem(s). The rule requires the notice to have enough specificity and detail to alert the parties about the exact nature of the problem. In other words, the request must provide sufficient facts to allow the District to effectively respond to the allegations.

Parent’s due process hearing request in this case includes a completed Oregon Department of Education Request for Due Process Hearing form along with a one-page list of allegations. The District specifically objects to the Parent’s description of Issue 1, Issue 2.C, and Issue 3, contained in the list of allegations. It is impossible to determine from the request for hearing if Parent has alleged sufficient bases for relief under the IDEA. The allegations in Parent’s request for due process hearing are too general and vague to allow the District to effectively respond to the allegations.

Parent’s first allegation is: Did the District deny Student FAPE during the 2009 or 2010 school year by failing to re-evaluate Student in all area’s of suspect disability? Parent provides insufficient details as to this allegation that would allow District to effectively respond.

Parent’s second allegation is: Did the District deny Student FAPE during the 2009 or 2010 school year by failing to revise the IEP to adequately address Student’s behavior? Parent has not provided any further information as to this allegation and provides insufficient details as to this allegation that would allow District to effectively respond.

Parent’s third allegation is: Did the District deny Student FAPE during the 2009 or 2010 school year by failing to offer Student an appropriate placement? Parent provides insufficient details as to this allegation that would allow District to effectively respond.

Parent’s fourth allegation is: Did the District deny Student FAPE during the 2009 or 2010 school year by failing to provide adequate IEP services, accommodations, and support to address Student’s behavior. Parent has not provided any further information as to this allegation and provides insufficient details as to these allegations that would allow District to effectively respond.

Parent’s fifth allegation is: Did the District deny Student FAPE by failing to provide written prior notice (October 15, 2010) to Parent of the District’s refusal to provide home instruction, refusal to change Student’s placement, or the District’s “Stand Ready Notice”? Parent provides insufficient details as to this allegation that would allow District to effectively respond.

Parent’s sixth allegation is: Did the District deny Student FAPE by failing to provide Parent with a copy of Student records? Parents listed two dates of IEP team Meeting but no other dates such as when the records were requested. Parent provides insufficient details as to this allegation that would allow District to effectively respond.

Parent’s seventh allegation is: Did the District take retaliatory action following the parties’ participation in mediation? The allegation appears to list five actions that Parent believes the retaliatory actions were taken but includes not dates or individuals involved. Parent refers to a November 20, 2010 District e-mail, but it is not clear what e-mail the Parent is

referring. Parent provides insufficient details as to this allegation that would allow District to effectively respond

Under the IDEA, a parent must allege facts regarding the identified problem, and allege them with sufficient clarity that the District can effectively respond. Although Parent's request can fairly be construed to include approximately seven allegations, it lacks sufficient clarity as to how the District allegedly violated the law. The request is therefore insufficient under OAR 581-015-2345(1)(a)(B).

CONCLUSION

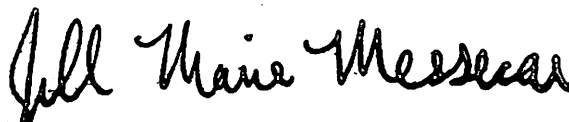
The due process complaint notice does not contain adequate clarity to meet the requirements of OAR 581-015-2345(1)(a)(B). Therefore, the due process complaint notice is dismissed and cannot proceed to hearing.

The parents may file an amended due process complaint notice only with the written consent of the District (and must allow the District the opportunity to resolve the amended complaint through the resolution process set forth in OAR 581-015-2350(3) or by petitioning me for permission to amend this complaint. If the District gives written consent, or an ALJ grants permission to amend, the timelines under the IDEA will start over as provided in OAR 581-015-2350(4) *See also* 20 USC §1415(c)(2)(E)(ii).

Because the due process complaint notice is being dismissed, the pre-hearing conference scheduled for 8:30 a.m. on September 27, 2011 is cancelled.

IT IS THEREFORE ORDERED:

The due process complaint filed on behalf of Student is insufficient and must be **DISMISSED**.



Jill Marie Messecar, 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 13th day of September, 2011 with copies mailed to:

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