

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

IN THE MATTER OF THE EDUCATION OF) **ORDER RE: SCHOOL DISTRICT'S**
Student and Portland Public School District) **SUFFICIENCY CHALLENGE TO**
) **STUDENT'S DUE PROCESS**
) **COMPLAINT AND FINAL ORDER**
)
) Case No. DP 12-112

On or about October 29, 2012, Parent filed a Due Process Complaint (complaint or due process complaint) with the Office of the State Superintendent of Public Instruction (the Office of the State Superintendent). In that complaint, Parent alleged that the Portland Public School District (the School District) failed to provide a free and appropriate public education to Student under the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), 20 USC §§ 1400 *et seq.* The Office of the State Superintendent referred the complaint to the Office of Administrative Hearings (OAH) on October 29, 2012.

On October 30, 2012, the OAH acknowledged receipt of the complaint, and notified Parent and the School District that it had assigned the case to Administrative Law Judge (ALJ) Denise McGorin. The OAH also scheduled a pre-hearing conference for November 29, 2012.

On November 6, 2012, counsel for the school district, Suzy Harris, submitted a timely challenge to the sufficiency of Parent's due process complaint under 20 U.S.C. §1415(b)(2)(A). Under that provision, a complaint "shall be deemed sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes that the complaint has not met the requirement of 20 § U.S.C. (b)(7)(A). In response, on November 7, 2012, Parent sent a letter to ALJ McGorin in which Parent provided some additional information about the reason for filing the complaint.

DISCUSSION

The IDEIA provides for due process hearings to challenge a local educational agency's identification, evaluation, educational placement or provision of a free and appropriate public education to children. 20 U.S.C. §1415(b)(6). 20 U.S.C. §1415(b)(7)(A) requires that the due process complaint contain the following information:

- (I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and 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.

A due process complaint is presumed to meet these notice requirements unless it is challenged by the school district. When, as here, a school district challenges the complaint, the ALJ must determine from the language of the complaint whether or not it meets the notice requirements. 20 U.S.C. §1415(c)(2)(D). 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. 20 U.S.C. §1415(c)(2)(E).

Here, Parent completed an Oregon Education Department of Education form entitled Request for Due Process Hearing (complaint or due process complaint). Parent's complaint complies with the first requirement of 20 U.S.C. §1415(b)(7)(A)(III) by providing the student's name, address and school. However, the complaint fails to comply with the other two requirements.

The second notice requirement of 20 U.S.C. §1415(b)(6)(A)(ii) is that the complaint provide facts relating to the issue or issues caused by the school district's action or inaction. The function of such notice is to give the other side "who, what, when, where and why" details about the reasons the party is requesting a hearing. That provides the basis for the parties to resolve the issues through mediation or to prepare for a due process hearing. Without the details of the dispute, neither resolution nor an effective hearing can be conducted.

To meet the notice requirement, the complaint must first set forth the facts showing that the student is entitled to the protections of the IDEIA. Here, Parent's complaint states that Student has "mental limitations, learning disabilities, processing delays & disorders." The complaint further states that Student has a "fragile state as a survivor of torture and now a severely bullied and assaulted PPS student." However, the complaint does not identify or describe any of these limitations, disabilities, delays, disorders or other conditions. The complaint also does not explain what Parent means by "fragile state" or "a survivor of torture."

The second notice requirement is that the complaint describe the action or inaction of the School District that is being challenged. In the complaint, Parent states that the school district failed to accommodate Student's disabilities. However, the complaint does not identify how or when the School District failed to accommodate the disabilities. Similarly, the complaint says that the School District falsified grade levels and progress notes but does not say how or when such action occurred. The same is true of the complaint's allegations that the School District lowered academic goals and refused unidentified services. Finally, the complaint says that the School District is refusing to provide Student a safe environment. The complaint does not state when or how that occurred. Moreover, with regard to a proposed solution, Parent wrote:

“Provide [Student] with [a] free and appropriate public education.” Thus, Parent does not indicate the specific remedies that Parent seeks for Student.

As a result, on its face, Parent’s due process complaint does not meet the notice requirements of the IDEIA. As a result, the complaint will be dismissed and not proceed to a hearing.

In order to comply with the notice requirements of the IDEIA, any amended due process hearing complaint must contain details about Student’s eligibility under the IDEIA. Additionally, for each alleged instance of an IDEIA violation by the School District, Parent must provide specific facts about when the violation occurred, over what period the violation continued, what specifically the School District did or failed to do, and how the violation impacted Student’s right to a free and appropriate public education. Parent also must provide specific facts relating to each remedy that Parent believes is necessary to resolve each alleged instance of IDEIA violations.

ALJ McGorin hereby grants permission for Parent to submit an amended due process complaint to the Office of the State Superintendent of Public Instruction

ORDER

The due process complaint filed by Parent is insufficient and is **DISMISSED**. The pre-hearing conference scheduled for November 29, 2012 is **CANCELLED**. Parent may submit an amended due process complaint to the Office of the State Superintendent of Public Instruction.

/s/ Denise Marie McGorin
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 November, 2012 with copies mailed to:

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