

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

IN THE MATTER OF THE EDUCATION OF) **RULING ON BEAVERTON**
) **SCHOOL DISTRICT'S OBJECTION**
STUDENT and Beaverton School District) **TO SUFFICIENCY OF HEARING**
) **REQUEST AND FINAL ORDER**
)
) **Case No.: DP 13-114**

HISTORY OF THE CASE

On September 4, 2013, Parent filed a Request for Due Process Hearing (hearing request or request) with the State Superintendent of Public Instruction. The State Superintendent of Public Instruction appointed Senior Administrative Law Judge (ALJ) Joe L. Allen, of the Office of Administrative Hearings (OAH), to conduct the due process hearing and issue a Final Order therein.

On September 13, 2013, Beaverton School District (the District), through counsel Graham M. Hicks, filed an objection to the sufficiency of Parent's hearing request on the grounds that the hearing request failed to meet the requirements of OAR 581-015-2345. Parent filed no response to the objection.

ISSUE

Whether Parent's request for a due process hearing should be dismissed because it fails to meet the requirements OAR 581-015-2345(1)(a)(B)(iii) and (iv). *See also*, 20 U.S.C. § 1415(b)(7)(A) and 34 CFR § 300.508(b)(5) and (6).

DOCUMENTS CONSIDERED

The District's objection and the Parent's due process complaint and Superintendent's referral documents were considered in preparing this ruling and order.

DISCUSSION AND CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA)¹ 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. §1400 *et seq.* Pursuant to IDEA, state and federal legislatures have passed rules and regulations

¹ In 2004, IDEA of 1997 was reauthorized as the Individuals with Disabilities Improvement Act (IDEIA), 20 U.S.C. § 1400 *et seq.* This amendment reflects no substantive changes to the relevant portions of the statute cited herein. The vernacular alternates between IDEA, IDEIA, and IDEA 2004. In this ruling, reference to the original acronym (IDEA) is maintained for the sake of clarity.

identifying the procedures a party, parent or school district, must adhere to when filing a request for a due process hearing in order to provide the adverse party sufficient notice to respond to the hearing request.

Pursuant to OAR 581-015-2350,² the District seeks an order dismissing Parent's request for a due process hearing on the grounds that it fails to meet the requirements set forth in OAR 581-015-2345. OAR 581-015-2345(1) identifies the requirements for a valid hearing request and provides, in relevant part:

(a) Parent Requests for a Due Process Hearing

* * * * *

(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 * * *;

(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*

² OAR 581-015-2350 provides, in relevant part:

(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.

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

* * * * *

(c) A party may not have a hearing until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (1)(a)(B) or (1)(b)(B).³

(Emphasis added.)

A request for due process hearing under the relevant statutes and rules is presumed to meet these notice requirements unless it is challenged by the school district. OAR 581-015-2350(1). Upon receipt of an adverse party's challenge to the sufficiency of the request, the ALJ must determine from the language of the hearing request whether it meets the basic requirements. If the due process hearing request fails to meet those basic requirements set forth by statute and rule, the ALJ must dismiss the complaint. In the event of such dismissal, the filing party may file an amended complaint only if the adverse party consents to the amended complaint or the ALJ grants leave to amend. OAR 581-015-2350(3)(A) and (B).

In this case, Parent submitted a form request, provided by Oregon Education Department of Education (ODE), apparently completed in her own hand. The form request includes the student's name, home address, as well as the name of the school or program currently attended by the student. As such, the request for hearing complies with the first two requirements set forth in OAR 581-015-2345(1)(a)(B)(i) and (ii). Nonetheless, Parent's request for hearing falls short of compliance with the remaining requirements.

³ The relevant language of OAR 518-015-2345 mirrors the text of 34 CFR § 300.508 which provides, in part:

(b) *Content of complaint.* The due process complaint required in paragraph (a)(1) of this section must include—

* * * * *

(5) 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

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

(c) *Notice required before a hearing on a due process complaint.* A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(Emphasis original.) This language, in turn, mirrors the sufficiency requirements found in 20 U.S.C. § 1415(b)(7)(A).

Beyond the information noted above, a request, to be valid, must provide 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 caused by the school district's action or inaction. OAR 581-015-2345(1)(a)(B)(iii). The purpose of this requirement is to provide the District with the details about the reason(s) the Parent is requesting a hearing in sufficient detail to allow the District to respond and engage in the resolution session and/or mediation. In the event the parties are unable to resolve issues raised by the hearing request, the basic details required by the statute and rules will allow the responding party to prepare for the due process hearing. Without a description of the nature of the problem of the child relating to the proposed or refused initiation or change, neither the District nor the ALJ can adequately assess the nature of the dispute. Accordingly, the resolution session, mediation proceedings, and the hearing itself would proceed rudderless and development of a remedy for perceived violations would be impracticable, if not impossible.

By requiring detail pertaining to the description of the nature of the problem of the child, the relevant statute and rules ensure a showing that the child is entitled to the protections of IDEA. Parent's due process hearing request states, "My son went to programs not suitable for [A]sperger's or social issues." Hearing Request at 1. This information allows the District and the ALJ to identify one element of the child's learning disability or impairment, Asperger's. However, the hearing request provides little, if any, additional detail that would allow the District to engage in the resolution session or prepare a defense at hearing. Importantly, the hearing request is devoid of dates pertaining to school attendance or any information about when, if at all, an Individual Education Program (IEP) was developed for the child. While the hearing request identifies several local education agencies, including Chehalem [Elementary], Highland Park [Middle School], Conestoga [Middle School], Pacific Academy, and Lifeworks, the request is devoid of any detail as to the dates of attendance or perceived violations at specific institutions. In addition, there is no evidence of IEP meetings or other participation by Parent and the District that would permit a determination of the issues evidenced by alleged programming needs of the child and deficiencies at the specific institutions. Further, the hearing request fails to explain what Parent means by "social issues."

Within the context of OAR 581-015-2345(1)(a)(B)(iii), the hearing request fails to identify the proposed or refused initiation or change in the child's IEP. The hearing request states the child attended programs not suitable for Asperger's or social issues. However, the hearing request is silent on why the programs attended were not suitable and how any such programs diverge from the child's IEP. There is insufficient information, within the text of the hearing request, to determine how or when the District allegedly failed to accommodate the child's educational disabilities. While the request makes reference to the child having "parties and lunchroom taken away" (Hearing Request at 4.), it does not identify when these acts occurred or at which institution.

Finally, with regard to a proposed resolution, the hearing request states, "Provide [child] a supportive program that fits his need of graduating and supports his interest, art and computers[.]" Hearing Request at 1. Parent's proposed resolution is unclear because it is not tied to any specific violation.

From the language of the due process hearing request, not reasonably possible, for the District to ascertain the alleged failures pertaining to the provision of a free, appropriate, public education mandated by the IDEA and the rules and regulations promulgated thereunder.

In order to comply with the statutory notice requirements, any amended due process hearing request, if permitted, must contain details about Student's eligibility under the IDEA as well as details, for each alleged instance statutory violation, sufficient to meet the goals identified in this ruling. 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 IDEA violations.

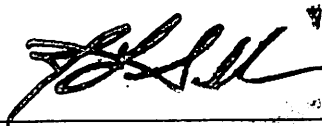
Parent's request for a due process hearing fails to meet the requirements of OAR 581-015-2345 and 34 CFR § 300.508 and must therefore be dismissed.

RULING AND ORDER

The District's objection to the sufficiency of the due process complaint is **SUSTAINED**.

Parent's request for a due process hearing is **DISMISSED**, without prejudice.

DATED this September 17, 2013



Joe L. Allen
Senior 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 17th day of September 2013, with copies mailed to:

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