

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

IN THE MATTER OF THE EDUCATION OF  <b>R.D. AND DOUGLAS COUNTY SCHOOL DISTRICT</b>	) ) ) ) ) ) )	<b>RULING ON DISTRICT’S MOTION FOR DETERMINATION OF SUFFICIENCY OF REQUEST FOR HEARING AND FINAL ORDER</b>  OAH Case No. 2018-ABC-01199 Agency Case No. DP 18-101
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On January 3, 2018, Parents filed a request for due process hearing (due process complaint) with the Oregon Department of Education (Department) alleging claims under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq. Parents claimed that the Douglas County School District (District) failed to provide Student with a free, appropriate public education from the beginning of the 2016-2017 school year until the present time. The Department referred the complaint to the Office of Administrative Hearings (OAH).

On January 10, 2018, the District, through its attorney Joel Hungerford, submitted a Motion for Determination of Sufficiency of Request for Hearing, challenging the sufficiency of Parents’ due process complaint. The District asserted that Parents’ due process complaint fails to satisfy the requirements of OAR 581-015-2345 as it does not adequately set forth a description of the nature of the problem, does not include sufficient facts to allow the District to effectively respond, and does not include all necessary information for an adequate proposed resolution of the problem.

**DISCUSSION**

The IDEA 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)(ii) 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;

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(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.

OAR 581-015-2345(1)(a)(B) contains similar notice requirements for a parent request for a due process hearing. OAR 581-015-2345(1)(a)(B)(iii) requires that the notice include “[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, pursuant to subparagraph (iv), the complaint must include “a proposed resolution of the problem to the extent known and available to the party at the time.”

Under 20 U.S.C. §1415(b)(7)(B), a party may not have a due process hearing until the party files a notice that meets the requirements of subparagraph (A)(ii). *See also* OAR 581-015-2345(1)(c). Nonetheless, a due process complaint is presumed to meet these notice requirements unless it is challenged by the school district. 20 U.S.C. §1415(c)(2)(A); OAR 581-015-2350(1).

When, as here, a school district challenges the complaint, the ALJ must determine from the face of the hearing request whether or not the complaint meets the notice requirements. 20 U.S.C. §1415(c)(2)(D); OAR 581-015-2350(2).<sup>1</sup> 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); OAR 581-015-2350(3).

The purpose for the notice requirements set out in 20 U.S.C. §1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(iii) is to give the other side the “who, what, when, where, and why” details about the reasons the party is requesting a hearing. The detailed information allows the parties to resolve the issues through mediation or to prepare for a due process hearing. A due process complaint that lacks sufficient factual detail about the nature of the dispute impedes both resolution and an effective due process hearing.

In this case, Parents’ claim, in pertinent part, as follows:

The District failed to provide Student with a free, appropriate public education from the beginning of the 2016-2017 school year until the present time by failing to include 1) goals, interventions, and instruction based upon scientific, research based methodology in the Student’s IEP, 2) present levels for the 2017-2018 school year from the Student’s current private school placement, 3) and relevant and necessary information from evaluations specifically sought by the Parents as

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<sup>1</sup> 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.

early as August 31, 2016. Thus, the District did not offer the Student an IEP reasonably calculated to enable the Student to make progress appropriate in light of [his/her] specific circumstances.

(Complaint at 8.) As for the proposed resolution, Parents allege in pertinent part as follows:

The District will reimburse Parents for all costs associated with the private placement of the Student at Bridgeway School in Eugene, Oregon and other compensatory education as necessary to place the Student where [s/he] would have been but for the District's failure to provide a free, appropriate public education.

(*Id.* at 9.)

The District asserts in its sufficiency challenge that Parents' complaint includes conclusory allegations that do not provide the necessary "who, what, when, where and why" details. Upon review of Parents' complaint, I agree with the District. For the reasons explained below, Parents' complaint does not meet the requirements of OAR 581-015-2345.

First, the complaint alleges that "the Student's IEP" failed to include certain information, without specifying the particular IEP in issue. Parents' factual allegations reference an August 31, 2016 IEP, a September 2016 IEP, a February 2017 IEP and a December 2017 IEP. It is not clear from the complaint which of the four IEPs Parents contest. One may surmise, in light of the previously filed and still pending case between these same parties (OAH No. 2017-ABC-00987/DP 17-115), that Parents are referring to the December 2017 IEP, but that is not evident from the face of the hearing request.

Second, the complaint fails to specify the nature of the "goals, interventions and instruction" allegedly omitted from the Student's IEP. As the District notes in its sufficiency challenge, the District may be willing to make changes to the IEP to address Parents' concerns in this regard, but the complaint does not provide enough detail for the District to determine what those concerns may be. At a minimum, the complaint needs to identify the subject area of the missing goal (be it behavior, math, reading, communication, occupational therapy, etc.). The same is true with regard to the allegedly missing interventions and instruction. In order to respond meaningfully to Parents' complaint, the District needs more information regarding the nature of the interventions and/or instruction the Parents contend should have been included, and the particular IEP from which they were excluded.

Third, the complaint alleges the District failed to include Present Levels for the 2017-2018 school year from Student's current private school placement (another indication that Parents are contesting the December 2017 IEP), but did not identify the particular information allegedly omitted. As above, the District asserts that it cannot respond in any substantive way to this allegation without knowing what information Parents contend is missing from the Present Levels.

Fourth, the complaint alleges that the District failed to include "relevant and necessary

information from evaluations specifically sought by the Parents as early as August 21, 2016,” without identifying or describing the allegedly relevant and necessary information. Here again, the District maintains that it may be open to adding information to Student’s IEP, but the allegation as written does not satisfy the requirements of OAR 581-015-2345(1)(a)(B), as it does not identify what “relevant and necessary information” is missing or the particular evaluations providing the source of that information.

In sum, Parents’ complaint fails to comply with 20 U.S.C. §1415(b)(6)(A)(ii)(III) and OAR 581-015-2345(1)(a)(B)(iii), because it does not provide a sufficient description of the nature of the problem, including facts relating to the problem.<sup>2</sup> As written, the complaint does not provide the District with fair notice, as the conclusory allegations make it very difficult for the District to respond to the complaint in any productive or meaningful way. Consequently, the complaint must be dismissed.

As set out 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. Pursuant to OAR 581-015-2350(4), if a party obtains consent or permission and 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.

### **RULING AND ORDER**

The due process complaint filed by Parents on January 3, 2018, assigned DP 18-101 and OAH No. 2018-ABC-01199, is insufficient and is DISMISSED.

Pursuant to OAR 581-015-2350(3)(B), Parents may submit an amended due process complaint to the Department no later than January 31, 2018.

Alison Greene Webster

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Senior Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> Having found that Parents’ complaint is insufficient under 20 U.S.C. §1415(b)(6)(A)(ii)(III) and OAR 581-015-2345(1)(a)(B)(iii), I need not address the District’s challenge to the sufficiency of Parents’ proposed resolution to the problem. OAR 581-015-2345(1)(a)(B)(iv).

## **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 16<sup>th</sup> day of January 2018, with copies mailed to:

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

**CERTIFICATE OF MAILING**

On January 16, 2018, I mailed the foregoing RULING ON DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY OF REQUEST FOR HEARING AND FINAL ORDER in OAH Case No. 2018-ABC-01199 to the following parties.

By: First Class Mail

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