

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

IN THE MATTER OF:THE EDUCATION OF STUDENT AND FOREST GROVE SCHOOL DISTRICT 15)))))))	DISTRICT’S MOTION FOR DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINTS OAH Case No. 2018-ABC-02002 Agency Case No. DP 18-125
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On September 11, 2018, Parents, on behalf of Student, filed a request for a due process hearing (hearing request) with the Oregon Department of Education (Department). In that complaint, the Parents alleged that the Forest Grove School District 15 (the District) violated sections of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C § 1400 et seq. and the corresponding administrative rules. On September 20, 2018, the Department referred the complaint to the Office of Administrative Hearings (OAH) and the OAH assigned Administrative Law Judge (ALJ) Jill Marie Messecar to preside at hearing.

On September 21, 2018, counsel for the District, Richard Cohn-Lee, submitted a challenge to the sufficiency of the Parent’s hearing request (motion). In the challenge, the District asserts that portions of the Parent’s request for hearing fail to meet the requirements of OAR 581-015-2345 and 20 U.S.C. §1415(b)(7)(A)(ii).

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.

See also OAR 581-015-2345(1)(a)(B).

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). However, 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 it meets the notice requirements. 20 U.S.C. §1415(c)(2)(D); OAR 581-015-2350(2). If it does, the matter will proceed to hearing. If it does 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 581-015-02350(3).

Here, Parent completed an Oregon 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)(ii) in that it includes the student's name, address and school. As discussed more fully below, the Parent's four allegations in their request for a due process hearing fail to comply with 20 U.S.C. §1415(b)(6)(A)(ii) and OAR 581-015-2345(1)(a)(B)(iii), because they do not provide sufficient description of the nature of the problem of Student and facts relating to the issue or issues caused by the District's action or inaction. The purpose for such a notice requirement is to give the District the "who, what, when, where and why" details about the reasons the Parents are requesting a hearing. Detailed information allows the parties to resolve the issues through mediation or to fully prepare for a due process hearing. A due process hearing request that lacks sufficient detail about the nature of the dispute hinders resolution of the dispute and impedes an effective due process hearing should mediation prove unsuccessful.

In the complaint, Parents marked the boxes to indicate that "Identification", "Evaluation", "Educational Placement", and "the Provision of a Free Appropriate Public Education to your child" were concerns. In the complaint, the first allegation asserts a failure by the District to re-evaluate Student in all areas of concern in the fall of 2016. *See* Hearing Request at 6-8. The complaint does not provide specific information about which areas of concern in which the District failed to evaluate student. Although the allegation also refers to a doctor's report with a diagnosis of ADHD, it is unclear whether Parents believe that the District was required to evaluate Student based on that diagnosis. The above list is not a list of information the Parents need to provide; it is simply an example of some of the information that Parents would need to provide in order to have a sufficient complaint.

The second and third allegations relate closely to the first allegation and lack much of the same details that the first allegation lacks, namely what areas of concern did the District fail to evaluate Student. These allegations also lack some details about who made the statements alleged and when the statements were made. The fourth allegation contains no details in an either/or allegation. Without details about who, what, when, how, and why the Parents are alleging that the District did or did not do an action or inaction it would difficult, if not impossible, for the District to respond to this allegation. The lack of specificity in these

allegations makes it very difficult for the District to respond in a substantive way to the Parent's complaint.

Pursuant to OAR 581-015-2350(3), Parent may amend a hearing request only if: (A) the District consents or (B) the ALJ grants permission. Pursuant to OAR 581-015-2350(4), if a party 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. Pursuant to OAR 581-015-2350(3), I have granted Parents leave to amend the defects to the four allegations if Parents deem it appropriate.

RULING and ORDER

The District's Motion for Determination of Sufficiency of Request for Hearing is **GRANTED as to Allegations 1, 2, 3, 4.**

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 1st day of October, 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 October 1, 2018 I mailed the foregoing DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINTS in OAH Case No. 2018-ABC-02002 to the following parties.

By: First Class Mail

Parent(s) of Student
2538 13th Ave
Forest Grove OR 97116

David Parker, Superintendent
Forest Grove School District 15
1728 Main St
Forest Grove OR 97116

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BY ELECTRONIC MAIL:

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255 Capitol Street NE
Salem, OR 97310-0203

Ryan K Clark
Hearing Coordinator
Office of Administrative Hearings