

That ODE has taken no action to ensure the District's compliance with the Stipulated Corrective Action ordered in Case No. 10-054-009.

That ODE failed to enforce the Corrective Action order in Case Nos. 10-054-022 and 10-054-027.

(Due Process Complaint at B7 and B9.)

OPINION

The Individuals with Disabilities Education Act (IDEA) authorizes the parent of a child with a disability to request a due process hearing "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 USC ¶ 1415(b)(6)(A); *see also* OAR 581-015-2345(1)(a)(A).

OAR 581-015-2345(1)(a)(B) states that the request for a due process hearing must include the following:

- (i) The child's name 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 or refused initiation or change, including facts relating to the problem; and
- (iv) A proposed resolution of the problem to the extent known and available to the party at the time.

The request for due process hearing satisfies the requirements of OAR 581-015-2345(1)(a)(B) against the District.

ODE argues that it is not a proper party to the parent's complaint and request for due process hearing. ODE asserts that it lacks the power to enforce a school district's plan of correction, and that its authority is limited to imposing financial measures against a school district to induce the district to comply with a plan of correction. OAR 581-015-2030(17).

Parent argues that ODE is a proper party to the parent's complaint and request for due process hearing because the parent has alleged that student was denied FAPE (free appropriate public education) and the District has not complied with the plan of correction based on ODE's powers pursuant to OAR 581-015-2030(17).

OAR 581-015-2030(17) states:

If the respondent refuses to voluntarily comply with a plan of correction when so ordered, the Superintendent may take one or more of the following actions:

- (a) Disapprove in whole or part, the respondent's application for federal funding;
- (b) Withhold or terminate further assistance to the respondent for an approved project;
- (c) Suspend payment, under an approved project, to a respondent;
- (d) Order, in accordance with a final state audit resolution determination, the repayment of specified federal funds; and
- (e) Withhold all or part of a district's basic school support in accordance with ORS 327.103.

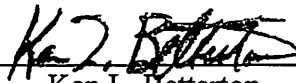
I agree with ODE that it is not a proper party to the parent's complaint and request for due process hearing. Oregon law does not give ODE the power to take over the administration of local school districts. ORS 332.072. Although school districts are required to operate a "standard" school district consistent with rules of the State Board of Education (ORS 327.006(8)), ODE can withhold state school funds when it finds deficiencies in standards. ORS 327.103.

OAR 581-015-2030(17) states that the Superintendent (*i.e.*, ODE) *may* take one of several actions when a district refuses to follow a plan of correction. ODE is not required to take any of the enumerated actions. The rule only gives ODE authority to impose financial penalties against a district for refusing to comply with a plan of correction. OAR 581-015-2030(17) does not give ODE authority to enforce a plan of correction.

The parent has alleged no other basis on which ODE could be responsible for any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education to the student. OAR 581-015-2345. Therefore, ODE is not a proper party to the parent's request for due process hearing. The request for hearing is dismissed as to ODE.

ORDER

The complaint and request for due process hearing against ODE is dismissed with prejudice.



Ken L. Betterton

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 2nd day of March, 2011 with copies mailed to:

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

CERTIFICATE OF SERVICE

On this 2nd day of March, 2011, I served a copy of the Final Order of Dismissal for Case No. DP 11-102B

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