

**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-02000 Agency Case No. DP 18-124
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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. The Department referred the complaint to the Office of Administrative Hearings (OAH) and on September 20, 2018, 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). 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 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 581-015-02350(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 first four allegations in their request for a due process hearing fails 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 fifth allegation is sufficient. 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 box to indicate that "the Provision of a Free Appropriate Public Education to your child" was a concern. In the complaint, the first allegation asserts a failure by the District to provide various accommodations as described in November IEPs of 2015, 2016, and 2017. The second allegation relates to the first allegation by asserting that when making the changes to the accommodations in the IEP, the District failed to provide prior written notice, the opportunity to meet to discuss the changes and references revising and amending the IEP to reflect the changes. *See* Hearing Request at 4. The first two allegations do not provide specific details (the who, what, when, and how) about which accommodations the District failed to provide, what effect that had on Student, on what dates the District failed to provide the accommodations, along with what dates the changes, revisions, and amendments the Parents are referring to. The complaint needs to describe dates relevant to the nature of the problem and the dates of the action or inaction of the District relating to that problem so that it is clear if the dates of the allegations are within the statute of limitations. The above list is not an exact list of the information the Parents need to provide and is simply an example of some of the information that Parents need to provide in order to have a sufficient complaint.

Likewise, the third and, fourth allegations lack sufficient information to meet the requirements set forth in the IDEA and the relevant administrative rules. *See* Hearing Request at

4. The third allegation that the District allegedly “failed to provide accurate and complete documents in a timely manner” does not contain a reference to the date of the IEPs, the minutes, requested work samples, or any other documents that Parents believe should have been provided. Nor is it clear what documents, other than those listed, that the Parents are referring to. Accordingly, it would difficult, if not impossible, for the District to respond to this allegation by attempting to demonstrate whether the unknown documents were actually provided. By the same token, the fourth allegation (that the District “failed to address required changes to the IEP” after Student was being homeschooled in April 2017) fails to identify which changes Parents believe were required and were not addressed. The lack of detail would require the District to speculate as to what changes the Parents are referring to.

The fifth and final allegation in the request for hearing is an allegation that the annual IEP, in this case usually November of each year, was not developed by November 29, 2017. The District asserts that the allegation lacks supporting details about who put the IEP on hold. That information is certainly the type of information that would help the District determine how to proceed but is also the type that could be developed at hearing. In the fifth allegation, the Parents provided some of the details that are missing from the other four allegations. While, the allegation does not provide the additional details identified by the District, it does contain sufficient detail to allow the District to determine what is at issue.

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 Parent leave to amend the complaint to address the defects to the first four allegations if the 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**. The District’s Motion for Determination of Sufficiency of Request for Hearing is **DENIED as to Allegation 5**.

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
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David Parker, Superintendent
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BY ELECTRONIC MAIL:

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Ryan K Clark
Hearing Coordinator
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