

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

IN THE MATTER OF:THE EDUCATION OF STUDENT AND HERMISTON SCHOOL DISTRICT 8)))))))	RULING ON DISTRICT’S MOTION FOR DETERMINATION OF SUFFICIENCY OF REQUEST FOR HEARING OAH Case No. 2018-ABC-02171 Agency Case No. DP 18-129
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HISTORY OF THE CASE

On October 29, 2018, Parent, on behalf of Student, filed a request for a due process hearing (hearing request) with the Oregon Department of Education (Department or ODE). In that complaint, Parent alleged that the Hermiston School District (the District) violated sections of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C § 1400 *et seq.* and the corresponding administrative rules when it failed to identify and evaluate Student as a child who may need specially designed instruction and/or related services due to a traumatic brain injury (TBI). On October 29, 2018, the Department referred the complaint to the Office of Administrative Hearings (OAH), which assigned Senior Administrative Law Judge (ALJ) Joe L. Allen to preside at hearing.

On November 6, 2018, counsel for the District, Joel Hungerford, submitted a challenge to the sufficiency of Parent’s hearing request (motion). In the challenge, the District asserts that Parent’s request for hearing fails to meet the requirements of OAR 581-015-2345.

DISCUSSION

Under Oregon law, parents and/or students may request due process hearings to challenge a school district’s identification, evaluation, educational placement, or provision of a free and appropriate public education (FAPE) to students who qualify for specially designed instruction and/or related services under the IDEA.

The Department has promulgated administrative rules that mirror the federal regulations applicable to hearings under the IDEA. OAR 581-015-2345 identifies requirements for hearing requests and responses to such requests under the IDEA in Oregon and provides, in relevant part:

- (1) Request for Hearing:
 - (a) Parent Requests for a Due Process Hearing:
 - (A) A parent may request a due process hearing in accordance with subsection(3)

if the parent does not agree with the identification, evaluation, educational placement of a child, or the provision of a free appropriate education to a child who may be disabled.

(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 (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.

OAR 581-015-2350 provides for challenges to the sufficiency of a hearing request and provides:

(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.

(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.

When, as here, a school district challenges the request for hearing, the ALJ must determine from the face of the hearing request whether it meets the notice requirements set forth in OAR 581-015-2345. OAR 581-015-2350(2). If the hearing request meets the requirements of the administrative rules, the matter will proceed to hearing. Conversely, if the hearing request fails to meet the basic requirements, the ALJ must dismiss the hearing request. OAR 581-015-02350(3).

In this case, counsel for Parent filed a four page request for hearing asserting Student “sustain[ed] multiple head injuries as a student athlete in [his/her] sophomore year” and that Student is now a “17-year-old student who currently attends Echo School District * * *.” Hearing Request at 1. The request for hearing also indicates Student is now in his 12th grade year. The hearing request also alleges Student now “requires 504 accommodations based on * * * TBI eligibility criteria” and that Student has “lost two years of education during the time [the District] failed to evaluate [Student] and implement an IEP.” Hearing Request at 1 and 2. As a remedy for the alleged failure to evaluate Student, Parent seeks the following remedies:

- 1) A finding that the violation of Child Find for the 2016-2017 and 2017-2018 school years denied [Student] FAPE, as required by the IDEA.
- 2) An Order requiring [the District] to provide appropriate modifications, accommodations, supplementary aids and services.
- 3) An Order requiring [the District] to provide compensatory education that will restore [Student] to the position [he/she] would have been in had [he/she] received full school days of appropriate education and services while a student in the district.
- 4) An Order requiring [the District] to fund and/or reimburse parent for [Student’s] educational and related services in relation to [his/her] needs, lost opportunity, compensatory education and other losses as a result of the FAPE violations.
- 5) To the extent that any violation of the IDEA set forth herein constitutes a procedural violation, it is alleged that each such violation resulted in the loss of educational opportunity for [Student], and caused a deprivation of educational benefits to [Student], resulting in denial of FAPE.
- 6) An Order that [Student] is the prevailing party on all issues and is therefore entitled to reasonable attorney fees.
- 7) An Order for such other relief that is appropriate and justified in equity and/or in law, under the circumstances.

8) [Student] was denied FAPE by [the District] in violation of the IDEA, based upon the foregoing allegations and any such other violations of IDEA as may be discovered during the course of this matter. All such claims are hereby reserved.

Hearing Request at 3.

The District's motion challenges the sufficiency of the hearing request asserting that it fails to include the requisite information required by federal and state regulations. I agree that the allegations are stated with insufficient detail either to allow the parties to resolve this matter through mediation or to allow the District to prepare for a due process hearing. Parent's request for a due process hearing fails to comply with the minimum requirements of 20 U.S.C. §1415(b)(6)(A)(ii) 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. As identified above, Parent's request for a due process hearing must provide a 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 Parent is requesting a hearing. That information allows the parties to resolve the issues through mediation or to fully prepare for a due process hearing. It is irrelevant that a party might be able to infer the underlying facts or the gravamen of a complaint from prior interactions or documents outside the complaint. 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.

Parent's hearing request fails to provide sufficient factual information for the time period covered in the hearing request. The hearing request contains vague indications that the District's failures began sometime during or after Student's sophomore year, when he/she allegedly sustained multiple head injuries as a student athlete. However, as the District points out, the hearing request's narrative does not discuss any factual information pertaining to when or if Student was diagnosed with a TBI while enrolled in the District; when he/she began to experience academic problems; when, how, or if Parent or Student notified the District of Student's injuries; or when (or even if) Parent requested an evaluation of Student while he/she was enrolled in the District.

While the hearing request indicates Student now receives accommodations, from Echo School District, under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (§504) under the eligibility category of TBI, it does not contain any information as to when those accommodations were implemented or whether any evaluations were performed prior to implementation. Moreover, the request for hearing fails to indicate when Student began attending Echo School District or when the §504 accommodations were implemented by that school district. Thus, the hearing request fails to provide the requisite factual information necessary (who, what, when, etc.) to sufficiently state a claim. The request for hearing must, on its face, meet the requirements of OAR 581-015-2345.

Further, the request for hearing fails to state any facts pertaining to how Student's alleged TBI impacts his academic performance or access to the general education curriculum. Further,

there is insufficient detail in the request for hearing to allow the District to determine when Parent alleges it should have suspected Student required evaluation for special education services. Rather, the request for hearing simply indicates “[w]hen [Student’s] parents asked for an assessment, [the District] agreed to perform the tests if [Student] transferred back to [the District]. Hearing Request at 2. This does not make clear that Parent made the District aware of Student’s alleged disability or requested an evaluation of Student while he/she was enrolled in the District.

Finally, the request for hearing is almost devoid of factual information pertaining to the bases for the remedies requested. For example, while the request for hearing identifies compensatory education as a requested remedy, there is no factual information regarding the amount of educational services the District allegedly denied to Student. Instead, the request for hearing simply indicates “[Student] lost two years of [his/her] education during the time [the District] failed to evaluate and implement an IEP. The amount of time lost over the two years (1,980 instructional hours) is based on the minimum number of hours of instructional time required by law for high schoolers each year, 990 hours.” Hearing Request at 2. From the request for hearing, it is impossible for the District, or this tribunal, to determine how the District’s alleged failure to evaluate Student for a TBI resulted in a loss of two full years of educational opportunities.

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. Parent made no request for leave to amend the hearing request if it was determined to be insufficient. Nevertheless, pursuant to OAR 581-015-2350(3), this ruling and order grants Parent leave to amend if he/she deems it appropriate. Any such amendment must be filed within 14 calendar days of this ruling and order.

RULING and ORDER

The District’s Motion for Determination of Sufficiency of Request for Hearing is **GRANTED**. Parent’s due process complaint is **DISMISSED** without prejudice.

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 7th **day of November, 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 November 9, 2018 I mailed the foregoing **RULING ON DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY OF REQUEST FOR HEARING** in OAH Case No. 2018-ABC-02171 to the following parties.

By: First Class Mail

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