

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

IN THE MATTER OF:THE EDUCATION OF G.G. AND WEST LINN- WILSONVILLE SCHOOL DISTRICT 3J) RULING ON DISTRICT’S MOTION FOR DETERMINATION OF SUFFICIENCY OF SECTION 504 COMPLAINT AND FINAL ORDER)) OAH Case No. 2019-ABC-03253) Agency Case No. DP 19-111
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HISTORY OF THE CASE

On November 1, 2019, Parent of Student GG filed a request for an expedited hearing with the Oregon Department of Education (Department) pursuant to OAR 581-015-2395.¹ In that complaint, Parent raised concerns involving educational placement and the provision of a free appropriate education to a student with a disability under Section 504 of the Rehabilitation Act and Americans with Disabilities Act (Section 504). Specifically, Parent alleged that the West Linn-Wilsonville School District (District) engaged in a pattern of conduct that intentionally inflicted emotional distress on Student and deliberately discriminated against Student in violation of Section 504. The Department referred the complaint to the Office of Administrative Hearings (OAH).

On November 4, 2019, the District, through its attorney Richard Cohn-Lee, submitted a Motion for Determination of Sufficiency of Due Process Complaint (sufficiency motion) challenging the sufficiency of the complaint.² The District asserted that Parent’s complaint fails to satisfy the requirements of OAR 581-015-2345(1) as it fails to provide required information, including sufficient facts to support the allegations, and fails to give the District fair notice of the issues for hearing. OAH assigned this matter to Presiding Administrative Law Judge (ALJ) Alison G. Webster for purposes of ruling on the District’s sufficiency motion.

¹ On November 5, 2019, Parent filed a “revised request” for an expedited hearing citing OAR 581-015-2395. However, pursuant to OAR 581-015-2350(3), a party may amend a due process or Section 504 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 request; or (B) the ALJ grants permission. The District did not consent in writing to the revised request, nor did Parent request and obtain an ALJ’s permission to amend the complaint. Therefore, the November 5, 2019 revised complaint is legally void. This ruling addresses the sufficiency of Parent’s November 1, 2019 request for an expedited hearing only.

² The same date, the District also filed a Motion for Ruling on Legal Issues contesting Parent’s request for an expedited hearing and seeking dismissal of the complaint for failing to state claims over which this forum has subject matter jurisdiction as a matter of law.

DISCUSSION

As noted above, Parent filed the complaint pursuant to OAR 581-015-2395, the process for requesting a hearing under Section 504. Pursuant to OAR 581-015-2395(3), the prehearing and hearing procedures in OAR 581-015-2340 through 581-015-2383 (the procedural rules for due process complaints under the Individuals with Disabilities Education Act) also apply to hearings conducted under Section 504 of the Rehabilitation Act.

OAR 581-015-2345(1)(a)(B) sets out the notice requirements for a due process complaint under Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (IDEA) as well as for a hearing request under Section 504. The rule states as follows:

(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.

Under OAR 581-015-2345(1)(c), a party may not have a due process hearing until the party files a notice that meets the requirements set out above. However, a due process complaint is presumed to meet these notice requirements unless it is challenged by the school district. OAR 581-015-2350(1).

Accordingly, when a school district challenges the sufficiency of a due process or Section 504 complaint, the ALJ must determine from the face of the hearing request whether or not the complaint meets the notice requirements. OAR 581-015-2350(2).³ If so, the matter will proceed to hearing. If not, the ALJ must dismiss the complaint. The parent then may file an amended

³ 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.

complaint only if the school district consents to the amended complaint or the ALJ grants permission for the amendment. OAR 581-015-02350(3).

The purpose for the notice requirements set out in 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. Whereas a due process or Section 504 complaint that lacks sufficient factual detail about the nature of the dispute impedes both resolution and an effective hearing because it does not provide the other party with fair notice and makes it very difficult for the other party to respond to the complaint in any substantive way.

In this case, for the reasons set out below, the District’s sufficiency motion has merit. Parent’s request for an expedited hearing under Section 504 lacks sufficient information and fails to comply with the requirements of OAR 581-015-2345(1)(a)(B)(iii).

As an initial matter, as the District notes, the complaint does not set out the address of the residence of the child, a basic requirement of OAR 581-015-2345(1)(a)(B)(i).

Second, the complaint does not provide the District with the necessary “who, what, when, where, and why” details to support the alleged violations. For example, the complaint alleges a claim of “Deliberate Indifference to Peer on Peer Harassment,” but does not allege who acted with deliberate indifference. The complaint alleges harassment of Student in the form of “name calling,” “mocking,” “statements by staff,” “teasing,” and assumptions that Student was the aggressor, but does not include sufficient detail about who was involved, or when or where the alleged incidents of harassment occurred. On their face, the allegations are too vague. This lack of specificity makes it very difficult for the District to respond to the claims in any meaningful and substantive way. Also, as the District notes, the complaint fails to set forth the legal or statutory basis for the claim of Deliberate Indifference to Peer on Peer Harassment.

The complaint also alleges claims of “Deliberate Indifference to Disability Harassment,” “Violation of Equal Protection Clause,” “Intentional Infliction of Emotional Distress,” and “Failure to Follow 504,” but, as with the first claim, these claims fail to state with any degree of specificity who allegedly committed the violations, when and how these alleged violations occurred, and why they violate the Special Education laws. Again, as written, the allegations are too vague to constitute fair notice to the District of the matters in dispute. Additionally, the complaint fails to set forth the statutory authority or legal theories behind these other claims.

Because the complaint fails to meet the requirements of OAR 581-015-2345(1)(a)(B), it must be dismissed. And because the complaint is dismissed on sufficiency grounds, it is unnecessary to address the merits of the District’s Motion for Ruling on Legal Issues.

For the parties’ convenience, however, I note the limited circumstances in which an expedited due process hearing is required. Parent requested this hearing pursuant to OAR 581-015-2395 and Section 504. However, as set out in OAR 581-015-2445(1), the expedited due process hearings rule, an expedited hearing is *not* available for alleged violations of Section 504. OAR 581-015-2445(1) provides as follows:

An expedited due process hearing must be held *if a hearing is requested under OAR 581-015-2345 because:*

(a) In a dispute over a disciplinary action for a child with a disability, the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding the child's educational placement; or

(b) The school district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(Emphasis added.)

Because this case does involve a hearing request under OAR 581-015-2354, it does not involve a dispute over a disciplinary action, and Parent does not allege that the District made a manifestation determination or placement decision with which Parent disagrees, this matter is not subject to the expedited hearing timeline set out in OAR 581-015-2445.

As discussed 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. Here, as ordered below, Parent has permission to file an amended hearing request in accordance with the notice requirements of OAR 581-015-2345(1)(a)(B).

RULING AND ORDER

The complaint filed by Parent on November 1, 2019, assigned DP 19-111, is insufficient and DISMISSED.

Pursuant to OAR 581-015-2350(3)(B), Parent may submit an amended complaint to the Department no later than November 22, 2019. The timelines for the resolution session and resolution period begin again with the timely filing of the permitted amended hearing request.

Alison G. Webster
Presiding 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 8th day of November, 2019, 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 8, 2019 I mailed the foregoing RULING ON DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY OF SECTION 504 COMPLAINT AND FINAL ORDER in OAH Case No. 2019-ABC-03253 to the following parties.

By: First Class Mail

Parent(s) of Student
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Wilsonville OR 97070

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West Linn-Wilsonville School District 3J
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BY ELECTRONIC MAIL:

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Lucy M Garcia
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