

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

IN THE MATTER OF:THE) **RULING ON DISTRICT’S MOTION FOR**
EDUCATION OF) **DETERMINATION OF SUFFICIENCY**
) **OF DUE PROCESS NOTICE**
K.W. AND MARCOLA SCHOOL)
DISTRICT 79J)
OAH Case No. 2021-ABC-04504
Agency Case No. 21-105

HISTORY OF THE CASE

On April 8, 2021, Parent filed with the Oregon Department of Education (Department) a Request for Hearing (Complaint) under the Individuals with Disabilities Education Act (IDEA), the Americans With Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973 (Section 504) against Marcola School District 79J (District). The Department referred the Complaint to the Office of Administrative Hearings (OAH). The OAH assigned the matter to Administrative Law Judge (ALJ) Jessica E. Toth.

On April 22, 2021, the District filed a Motion for Determination of Sufficiency of Due Process Notice (Motion). In its Motion, the District asserted that the Complaint failed to satisfy the requirements of 20 U.S.C. §1415(b)(7)(A) and OAR 581-015-2345(2) as it failed to provide sufficient facts to support the allegations forming the issues for hearing.

DISCUSSION

The Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (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;

* * * * *

(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.

OAR 581-015-2345(1)(a)(B) contains similar notice requirements for a parent request for a due process hearing.¹ 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). Nonetheless, 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 the complaint meets the notice requirements. 20 U.S.C. §1415(c)(2)(D); OAR 581-015-2350(2).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).

The purpose for the notice requirements set out in 20 U.S.C. §1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(iii) is to give the other side the information needed for the parties to resolve the issues through mediation or to prepare for a due process hearing. A due process complaint that lacks sufficient factual detail about the nature of the dispute impedes both resolution and an effective due process hearing because it does not provide the other party with fair notice and prevents the other party from meaningfully responding to the substantive issues raised in the complaint.

The District challenges the information put forth in the Complaint regarding the facts supporting the legal issues raised. The Complaint raises two claims under the IDEA and Oregon Administrative Rules, Chapter 581, Division 15. In its Motion, the District contends the Complaint fails to support these allegations with sufficient factual information to allow the District to meaningfully respond. For the reasons set out below, the District's challenge has merit with regard to the claims as discussed below. The Complaint fails to comply with 20 U.S.C. §1415(b)(6)(A)(ii) and OAR 581-015-2345(1)(a)(B)(iii) with regard to those claims because it does not provide sufficient information. The Complaint does not adequately describe the nature of the problem and does not set out specific, detailed facts relating to the problem with

¹ For example, OAR 581-015-2345(1)(a)(B)(iii) requires that the notice include “[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[.]”

² 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.

regard to those claims. Each of the claims raised in the Complaint is reviewed for sufficiency, below.

Claim 1: Educational Placement

On Parent's hearing request form, where directed to check boxes indicating concerns, Parent checked, "Educational Placement." In a corresponding Statement of Concern, Parent noted that Student's current IEP is appropriate to meet Student's needs regarding educational placement. The Statement of Concern appears to identify as the nature of the problem statements made, presumably to Parent, by the District's special education director, indicating the director's belief or opinion that the current IEP ought to be modified.

From the hearing request form as written, it must be concluded that, at present, Student's current educational placement is appropriate to meet Student's needs. The statements of one District employee would have no legal bearing on Student's right to receive the educational placement agreed upon in the current IEP. Parent fails to include any facts which would describe how comments made by the special education director have any impact on the placement currently guaranteed to Student through the IEP. No facts indicate that the District has acted upon the alleged statements by unilaterally changing Student's educational placement, for example. If such an event has occurred, the hearing request lacks sufficient detail describing the nature of that problem. The hearing request is not sufficient with regard to Claim 1: Educational Placement.

Claim 2: Provision of Free Appropriate Public Education

Similarly, on Parent's hearing request form, where directed to check boxes indicating concerns, Parent checked, "the provision of a Free Appropriate Public Education to your child." In a corresponding Statement of Concern, Parent noted that Student's current IEP is appropriate to meet Student's needs and that the IEP team agreed that the IEP offers a FAPE to Student. The Statement of Concern appears to identify as the nature of the problem statements made, presumably to Parent, by the District's special education director, indicating the director's belief or opinion that the current IEP ought to be modified.

As with Claim 1, from the hearing request form as written, it must be concluded that, at present, Student's current IEP offers a FAPE to Student. The statements of one District employee would have no legal bearing on Student's right to receive the offer of a FAPE agreed upon in the current IEP. Parent fails to include any facts which would describe how comments made by the special education director have any impact on the FAPE offer currently guaranteed to Student through the IEP. No facts indicate that the District has acted upon the alleged statements by unilaterally failing or refusing to implement Student's related services, for example. If such an event has occurred, the hearing request lacks sufficient detail describing the nature of that problem. The hearing request is not sufficient with regard to Claim 2: Provision of a Free Appropriate Public Education.

Conclusion

A plain reading of Parent's due process hearing request results in the conclusion that, at present, Student is offered and receives a FAPE, including an educational placement appropriate to meet Student's unique needs, through Student's current IEP. Parent clearly states as such in the hearing request. Without additional facts describing subsequent events such as the District's failure or refusal to implement the IEP, Parent's agreement to a proposed change in the IEP, or some other legally actionable event, the hearing request lacks sufficient detail describing the nature of either the problem of educational placement or the provision of a FAPE to Student. As presented in the due process hearing request, the facts indicate that Student currently receives a FAPE, is entitled to continue doing so, and can expect to continue doing so, until some circumstance causes that legal status to change. The hearing request must therefore be dismissed.

RULING AND ORDER

The Complaint, filed pursuant to OAR 581-015-2345 on April 8, 2021, assigned Agency Case Number 21-105, is insufficient and is **DISMISSED** without prejudice.

The prehearing conference set for May 14, 2021 has been removed from the calendar.

Pursuant to OAR 581-015-2350(3)(B), Parent may submit an amended due process complaint to the Department no later than May 26, 2021.

Jessica E. Toth

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 26th day of April, 2021, with copies mailed to:

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