

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

IN THE MATTER OF:THE EDUCATION OF)	RULING ON PORTLAND SCHOOL DISTRICT 1J'S MOTION CHALLENGING SUFFICIENCY OF DUE PROCESS COMPLAINT
STUDENT AND PORTLAND SCHOOL DISTRICT 1J)	OAH Case No. 2023-ABC-05929 Agency Case No. DP 23-105
)	

HISTORY OF THE CASE

On April 19, 2023, Parent, on behalf of Student, filed a request for a due process hearing (hearing request) with the Oregon Department of Education (Department). In that complaint, Parent alleged that the Portland School District 1J (the District) violated sections of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C § 1400 *et seq.* and the corresponding administrative rules. On April 20, 2023, the Department referred the complaint to the Office of Administrative Hearings (OAH), which scheduled a pre-hearing conference for May 23, 2023. The OAH assigned Administrative Law Judge (ALJ) C. Meerdink to preside at hearing.

On May 4, 2023, counsel for the District, Erin Burris, submitted Portland School District 1J's Motion Challenging Sufficiency of Due Process Complaint (motion). In the challenge, the District asserts that the 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). The purpose of the notice requirements contained in OAR 581-015-2345 is to provide the responding party sufficient information to determine the “who, what, when, where and why” it needs to respond and potentially settle the allegations against it. *See, In the Education of Student and Medford School District*, DP 16-108 at 2-3 (SEA Or June 17, 2016). 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).

Parent’s request for hearing includes Student’s name, address, school attended, and proposed resolutions that Parent requests. However, Parent’s request for a due process hearing fails to comply with 20 U.S.C. §1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(iii), because none of the nine claims Parent alleges provide a sufficient description of the relevant dates, programs, personnel, and actions of the District to allow the District to prepare for a hearing to resolve Parent’s concerns.

Before addressing the included claims, the first issue to resolve is Parent’s assertion that the District remains legally responsible for Student’s educational needs as a student with disabilities, despite Student moving outside of the District’s physical boundaries in 2022. While the question of which school district (Portland or Parkrose) is responsible for providing Student’s educational needs could be an issue at a hearing, the only determination to be made in this ruling is whether the hearing request includes the required information.

While Parent’s first claim asserts that the District failed “to prevent punishment of [Student] for actions related to [Student’s] disability,” (Hearing Request at 2 and 4) nothing in the claim establishes when the “punishment” happened, the nature of the “punishment,” who administered the “punishment,” or how such “punishment” violated the IDEA. This information is necessary to allow the District to respond to such an allegation.

Parent’s second claim asserts that the District failed “to provide accurate prior written notice of their denial... that [Student’s teachers] be trained in collaborative problem-solving methods.” (Hearing Request at 4.) As drafted, Parent’s claim does not assert the District failed to provide prior written notice as required by the relevant statutes and rules. Instead, Parent alleges – albeit indirectly – that the District’s prior written notice was somehow inaccurate. Because this allegation included no timing of when Parent made the request, when the District issued the “inaccurate” prior written notice, or the reason stated by the District for such refusal, the District’s ability to respond is impeded.

Parent’s third claim asserts that the District failed “to implement the IEP as written.” (Hearing Request at 4.) While the claim includes some notations from a ‘psychoeducational eval,’ Parent provided no details as to which provisions of the IEP the District failed to

implement or implemented incorrectly. This provides insufficient detail to allow the ALJ to delineate a specific issue for hearing or for the District to respond.

Parent's fourth claim asserts that she was denied an opportunity to "meaningfully participate in the educational decision making." (Hearing Request at 5.) OAR 581-015-2190(1) requires that the District "provide [Parent] with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child." Parent asserts that she made an *unscheduled* visit to a District employee, and that police were summoned to that meeting. Parent also asserts that she has not received responses to undated emails she has sent to specific District personnel. However, nothing in the allegation indicates if or when the District convened a meeting without providing Parent notice, how the District kept her from participating in any such meeting, or how the District interfered with her participation in creating, developing, or implementing Student's educational needs. This also inhibits the District's ability to respond. Accordingly, this allegation fails to meet the requirements of OAR 581-015-2345.

Parent's fifth and sixth claims assert that District failed to both "ensure all necessary members attend IEP meetings" (Hearing Request at 5) and "to devise an appropriate IEP based on [Student's] individual needs." (Hearing Request at 5.) Parent specifically asserted that, at the "last IEP meeting * * * needed people who should be assessing and assisting in transition planning out of [Student's current school] were not in attendance." (Hearing Request at 5.) This assertion indicates which IEP meeting is at issue, but does not specify which "necessary members" were absent, how their absence affected the creation of the IEP, how the IEP is deficient, or how this violated the IDEA requirements. Again, the District's ability to respond to such claims is inhibited and Parent's allegation fails to satisfy the requirements for sufficient notice.

Parent's seventh claim asserts that the District failed "to allow [Student] access and knowledge of option to participate in extracurricular activities to the same extent as his nondisabled peers when he could have participated or participated with accommodations." (Hearing Request at 5.) Again, the claim includes no assertions of specific extracurricular activities in which Student wanted to engage, any program in which the District precluded Student from engaging, or any specific accommodations Student or Parent requested but was denied. Moreover, there is no indication of when, if at all, such failure on the District's part is said to have occurred.

Parent's eighth and ninth claims assert that the District failed to "adhere to state-mandated timelines" (Hearing Request at 9) or "conduct a complete evaluation of [Student's] needs." (Hearing Request at 9.) Parent alleges that Student was diagnosed with Autism Spectrum Disorder "in July," but does not specify in which year that diagnosis was made. Nor does the claim specify how the District was notified of the diagnosis, when (if ever) Parent consented to an evaluation of Student by the District, or whether the District refused a request to evaluate Student. Again, this allegation fails to meet the requirements of OAR 581-015-2345.

Based on the foregoing reasons, Parent's hearing request does not meet the requirements of OAR 581-015-2345(1)(a)(B)(iii). Accordingly, the hearing request is dismissed as insufficient.

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. If Parent amends the hearing request to include the necessary information, the applicable timelines for the resolution session and resolution period begin again with the filing of the amended hearing request. Under OAR 581-015-2350(4). Although the District has not consented to Parent filing an amended hearing request, the ALJ now allows that opportunity for Parent to do so. Parent has 14 days from the date this Ruling issues to file an amended hearing request.

RULING and ORDER

The District's motion is **GRANTED**. Parent's due process complaint filed on April 19, 2023, and designated as DP 23-105, is **DISMISSED** without prejudice.

Pursuant to OAR 581-015-2350(3)(B), the ALJ hereby grants Parent the opportunity to file an amended hearing request. Parent may submit an amended due process complaint no later than May 23, 2023.

C. Meerdink

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 @ day of @, 201@, with copies mailed to:

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

SERVICEMEMBERS' CIVIL RELIEF ACT

Unless otherwise stated in this order, the Office of Administrative Hearings (OAH) has no reason to believe that a party to this proceeding is subject to the Servicemembers' Civil Relief Act (SCRA). If a party to this proceeding is a servicemember who did not appear for the hearing, within

the servicemember's period of service, or 90 days after their termination of service, that party should immediately contact the agency to address any rights they may have under the SCRA.

CERTIFICATE OF MAILING

On May 9, 2023, I mailed the foregoing RULING ON PORTLAND SCHOOL DISTRICT 1J'S MOTION CHALLENGING SUFFICIENCY OF DUE PROCESS COMPLAINT issued on this date in OAH Case No. 2023-ABC-05929.

By: Certified Mail



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