

(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.

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).

Where, as here, a school district challenges the sufficiency of 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 the complaint meets the notice requirements, the matter will proceed to hearing. If it does 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 581-015-2350(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 “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. A due process complaint that lacks sufficient factual detail about the nature of the dispute impedes both

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.

resolution and an effective due process 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.

Here, as noted above, Parent’s due process complaint raises four concerns under the IDEA (identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE)). In its Motion, the District contends the due process complaint does not meet the minimum statutory requirements and does not provide sufficient factual information to allow the District to meaningfully respond. For the reasons set out below, the District’s challenge has merit.

The due process complaint fails to comply with 20 U.S.C. §1415(b)(6)(A)(ii) and OAR 581-015-2345(1)(a)(B). The complaint does not include the required information about Student, does not adequately describe the nature of the problem, and does not set out specific detailed facts relating to the problem.

Minimum Statutory Requirements

As noted above, under 20 U.S.C. §1415(b)(7)(A)(ii)(I), the due process complaint must contain “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.” Under OAR 581-015-2345(1)(a)(B)(i), the complaint must include the child’s address or available contact information. As the District argues in its Motion, in this case, the due process complaint does not contain Student’s residence address. Instead, the complaint states that the “address is confidential due to DV” and will be provided to the Department and Office of Administrative Hearings (OAH) in a confidential manner. Due process complaint at 1.

While the need to keep Student’s address confidential because of domestic violence concerns is understandable, the law nevertheless requires that the complaint provide such information. The District is entitled to this confidential information in order to determine whether Student is a resident of the West Linn-Wilsonville School District and whether Parent has standing to file this due process complaint against the District. Moreover, in a due process hearing, personally identifiable information (including a child’s name, date of birth, address, disability) provided to the District, Department and OAH, is to be kept confidential. *See* OAR 581-051-2375 (4) (requiring that the ALJ’s decision be written “in such a manner so that personally identifiable information will not be disclosed.”).

Description of the Problem

Under 20 U.S.C. §1415(b)(7)(A)(ii)(III) and OAR 581-015-2345(1)(a)(B)(iii), the due process complaint must contain “a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem.” As the District asserts in its Motion, Parent’s due process complaint does not contain an adequate description of the problem. Parent does not provide the necessary “who, what, when, where, and why” details about the four identified concerns.

In the complaint, Parent alleges as follows:

[Student] has not received access to education, supports or services since COVID school closures in 2020; ESY starting June 16, 2023 is at stake; urgent mental health services were denied to [Student by the District]; [District] unilaterally removed [Student] from special ed placement on 5/29/23 without PWN.

Due process complaint at 1. Parent attached to the complaint an email communication between Parent and the District and a Prior Notice of Special Education Action issued by the District. The Prior Notice from the District asserts that Student does not have an established special education eligibility in Oregon and, in the absence of parental consent to evaluate Student to establish Student's eligibility for special education in Oregon, the District would discontinue special education services for Student as of May 29, 2023. *Id.* at 2-3.

Although Parent attached to the complaint information explaining the basis for the District's special education action (discontinuation of temporary special education services), the complaint does not specify any particular claim or issue that Parent (or Student) has related to the District's action. Parent does not describe the nature of the problem, nor does Parent provide any factual details related to her challenge to the District's action. Additionally, as set out above, Parent alleges that Student has not received access to special education, supports, and/or services since 2020 but again the complaint fails to provide any pertinent facts related to this allegation. In particular, the complaint does not describe the education, supports, or services allegedly denied to Student, when these supports or services were supposed to be provided to Student, and/or who was supposed to provide them (*i.e.*, District staff, Portland Public Schools staff, or others).

The complaint also fails to provide pertinent facts related to the allegation that Student was denied mental health services. The complaint does not describe when or why these services were denied to Student, the services that were allegedly denied, and/or who denied Student these services (again, District staff, Portland Public Schools staff, or others).

In the absence of this required information (including Student's address, a description of the nature of the problem and the facts supporting the allegations), the due process complaint fails to meet the sufficiency standards set out in 20 U.S.C. §1415(b)(6)(A)(ii) and OAR 581-015-2345(1)(a)(B). Accordingly, Parent's May 30, 2023 due process complaint shall be dismissed.

Finally, as noted above, a party may amend the due process complaint only if the other party consents in writing or if the ALJ grants permission. OAR 581-015-2350(3). In this case, the ALJ grants Parent permission to amend the due process complaint, as long as the amended complaint is filed no later than June 30, 2023.

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RULING AND ORDER

The due process complaint filed by Parent on May 30, 2023, assigned DP 23-107, is insufficient and DISMISSED.

Pursuant to OAR 581-015-2350(3)(B), Parent may submit an amended due process complaint to the Department no later than June 30, 2023.



Alison Greene Webster
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.**

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 June 13, 2023, I mailed the foregoing RULING ON DISTRICT’S MOTION FOR DETERMINATION OF SUFFICIENCY OF DUE PROCESS COMPLAINT AND FINAL ORDER in OAH Case No. 2023-ABC-06005 to the following parties.

[REDACTED]

[REDACTED]

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