

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

IN THE MATTER OF: THE
EDUCATION OF

**M.B. AND BEAVERTON SCHOOL
DISTRICT 48J**

**RULING GRANTING DISTRICT'S
MOTION FOR DETERMINATION OF
SUFFICIENCY OF REQUEST FOR
HEARING AND FINAL ORDER OF
DISMISSAL**

OAH Case No. 2024-ABC-06454

Agency Case No. DP 24-006

On March 15, 2024, Parents, on behalf of Student, filed a request for a due process hearing (complaint) with the Oregon Department of Education (Department). In that complaint, Parents alleged that the Beaverton School District 48J (the District) violated sections of the Individuals with Disabilities Education Act (IDEA), 20 USC sections 1400 through 1482, and its corresponding administrative rules, by failing to provide Student with a free and appropriate public education (FAPE). The Department referred the complaint to the Office of Administrative Hearings (OAH) for the scheduling of a contested case hearing on the complaint. The OAH assigned Senior Administrative Law Judge (ALJ) Bradley A. Schmidt to preside over the matter.

On March 25, 2024, the District submitted a challenge to the sufficiency of Parents' hearing request. In the challenge, the District asserts that portions of Parents' request for hearing fail to meet the requirements of 20 USC section 1415(b)(7), 34 CFR section 300.508(b), and 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 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.

See also 20 USC § 1415(b)(7)(A) (containing the IDEA provision upon which the above rule is based).

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.

See also 34 CFR § 300.508(d) (containing nearly identical requirements).

When, as here, a school district challenges the sufficiency of a due process complaint, the ALJ must determine from the face of the complaint whether it meets the notice requirements set

forth in OAR 581-015-2345. OAR 581-015-2350(2). If the complaint meets the requirements of the administrative rules, the matter will proceed to hearing. Conversely, if the complaint fails to meet the basic requirements, the ALJ must dismiss the hearing request. OAR 581-015-02350(3).

The present complaint included Student's name and address and identified the school attended by Student. These satisfied the requirements of OAR 581-015-2345(1)(a)(B)(i) and (ii). However, the complaint lacks sufficient specificity to meet the requirements of OAR 581-015-2345(1)(a)(B)(iii) and (iv).

OAR 581-015-2345(1)(a)(B)(iii) appears to set a low requirement for a sufficient complaint, requiring only 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." However, this apparently loose requirement must be viewed in the context of the IDEA due process hearing procedure and the case law that has grown up around the IDEA.

Procedurally, the complaint serves to put the District on notice, both to potentially facilitate a resolution of the matter without hearing or, should the parties fail to reach an agreement, to define the scope of the hearing itself. A vaguely drafted complaint—such as one that implies, but does not explicitly state, where a district fell short of its IDEA obligations—thus implicates both notions of judicial economy and basic fairness.

In terms of the relevant law, the IDEA places both procedural and substantive requirements upon public schools. Procedural requirements include, for example, the process for creating a student's individualized educational program (IEP). *See, e.g.*, OAR 581-015-2200 (specifying the contents of the IEP); OAR 581-015-2205 (specifying the factors that must be considered in the creation of an IEP); OAR 581-015-2210 (specifying the members of the IEP team). Substantive requirements include, for example, the minimum scope of an IEP for it to ensure a FAPE. *See, e.g., Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 US ___, 137 S Ct 988 (2017) (requiring that an IEP contain appropriately ambitious goals in light of a student's circumstances).

Parents' complaint listed the following issues to be decided at hearing:

- (1) Whether the District denied the Student a FAPE by failing to provide adequate special education in the area of reading from March 2022 to present;
- (2) Whether the District denied the Student a FAPE by failing to provide adequate special education in the area of writing from March 2022 to present; and
- (3) Whether the District denied the Student a FAPE by failing to change his placement when requested by the Parents in March 2024.

Complaint at 6. Parents also listed the relief sought, as follows:

- (1) Declaratory relief that the District denied the Student a FAPE;
- (2) Compensatory special education and related services for the Student to allow him to obtain the educational benefit that he would have received but for the District's violations of the IDEA and denial of FAPE, consistent with

[the IDEA];

(3) Reimbursement for the Parents' expenses associated with obtaining independent educational services and evaluations;

(4) An IEP [Individualized Education Program] moving forward that is appropriately developed, reviewed, and revised, and reasonably calculated to meet the Student's unique needs in reading, writing, and auditory processing;

(5) Declaratory relief that the Parents' requested placement * * * is appropriate;

(6) An Order that the District shall grant placement * * * to allow the Student to access a FAPE; and

(7) Whatever additional relief the ALJ may find just and equitable.

Complaint at 7.

In support of the above, the complaint listed Student's relevant diagnoses—ADHD, specific learning disability (SLD) in reading, auditory processing disorder, dysgraphia, and speech difficulties—and expressed Parents' general dissatisfaction with both the amount of specially designed instruction (SDI) allocated to Student and the methodology of that SDI. (Complaint at 1-6.) However, it provided this information in terms of a general narrative without adequately pinpointing where, when, and how the District allegedly violated the procedural and substantive requirements of the IDEA.

For example, the first reference within the complaint to the amount of SDI provided by the District states that, in March 2022, Student “was provided 120 minutes/month (approximately 6 minutes per day) of specially designed instruction in combined reading and writing.” (Complaint at 3 (emphasis in original).) The complaint fails to specify whether this was in accordance with Student's IEP, or whether this constituted a failure to implement the IEP. It implies, but does not explicitly state, that this amount of SDI was inadequate to provide a FAPE. It also fails to specify whether or not the amount of SDI provided in March 2022 constitutes one of the allegations contributing to its overall contention that the District failed to provide Student with a FAPE.

The above example is typical of the narrative contained within the complaint. The complaint repeatedly includes information implying potential IDEA violations but without either asserting an actual violation or giving notice that the potential violations constitute allegations Parents intend to prove at hearing in support of the due process claim. Some other examples of implicit, not explicit, allegations in the complaint include the following: that the SDI implemented by the District was not reasonably calculated to enable Student to make progress in light of Student's circumstances; that the District failed to follow all the IEP procedural requirements; that the District failed to evaluate Student in a timely manner; that Parents obtained multiple independent evaluations for which they were not reimbursed; and that Student's current placement (initiated by Parents) constitutes the least restrictive environment in which his IEP may be implemented. The listed hearing issues themselves, quoted above, do not connect the alleged denials of FAPE to specific, identifiable requirements of the IDEA. Contrary to Parents' assertion, the narrative contained in the complaint fails to include the requisite “who,

what, when, where and why” details about the alleged violations. If the Parents wish to make specific allegations regarding District failures under the IDEA, it should make those allegations explicit.

Moreover, the complaint fails to set forth a detailed chronology of events related to each of the asserted hearing issues. Some of the details one might expect are as follows: the dates of all IEP meetings; whether, when, and how the District failed to implement Student’s IEP; the date and contents of any prior written notices (PWNs) issued to Parents by the District; the details of Student’s private tutoring, such as start date, end date, and progress therein; and the specific results of any evaluations. That said, the specific supporting allegations to be included in the complaint would ultimately depend upon what IDEA violations the Parents intend to prove.

In sum, the complaint, while providing a birds-eye-view of Parents’ position, did not enumerate the IDEA violations it alleges or provide adequate supporting details regarding any alleged IDEA violations. It thus failed to provide sufficient notice to facilitate meaningful engagement from the District and failed to meet the requirements of OAR 581-015-2345(1)(a)(B). The District’s Sufficiency Challenge of Student’s Due Process Complaint must be granted.

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). The ALJ grants Parents permission to amend the due process complaint. Any such amendment must be filed within 14 calendar days of the date of this Ruling and Order.

RULING and ORDER

The District's Motion for Determination of Sufficiency of Request for Hearing is **GRANTED**. The due process complaint filed by Parent on March 15, 2024 is insufficient and therefore **DISMISSED**.

The ALJ hereby grants leave for Parent to file an amended due process complaint. If Parent elects to amend the complaint, the amendment must be filed no later than 14 days from the date of this Ruling and Order. If Parent elects to file an amended due process complaint, all relevant timelines will begin anew as of the date of filing.

Bradley A. Schmidt

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 March 28, 2024, I mailed the foregoing RULING GRANTING DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY OF REQUEST FOR HEARING AND FINAL ORDER OF DISMISSAL in OAH Case No. 2024-ABC-06454 to the following parties.

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