

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

IN THE MATTER OF THE EDUCATION OF: STUDENT AND PORTLAND SCHOOL DISTRICT 1J) RULING GRANTING DISTRICT’S MOTION FOR DETERMINATION OF SUFFICIENCY OF REQUEST FOR HEARING AND FINAL ORDER OF DISMISSAL)) OAH Case No. 2024-ABC-06482) Agency Case No. DP 24-007
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On April 22, 2024, Parent, on behalf of Student, filed a request for a due process hearing (complaint) 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 corresponding administrative rules. On April 22, 2024, the Department referred the complaint to the Office of Administrative Hearings (OAH), which scheduled a prehearing conference for May 2, 2024.¹ The OAH assigned Senior Administrative Law Judge (ALJ) Alison Greene Webster to preside at hearing.

On May 1, 2024, counsel for the District submitted a challenge to the sufficiency of Parent’s complaint (motion). In the challenge, the District asserts that portions of Parent’s complaint fail 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 of Education has promulgated administrative rules that mirror the federal regulations applicable to hearings under the IDEA. OAR 581-015-2345² identifies requirements for hearing requests and responses to such requests under the IDEA in Oregon and provides, in relevant part:

(1) Request for Hearing:

¹ The prehearing conference convened as scheduled on May 2, 2024 and was continued to May 7, 2024 pending a determination on the District’s challenge to the sufficiency of the complaint.

² The requirements of OAR 581-015-2345(1)(a)(B) mirror the federal requirements identified in 20 U.S.C. §1415(b)(7)(A).

(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 581-015-2350³ 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

³ The requirements of this rule are nearly identical to the provisions of 34 CFR §300.508(d).

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 complaint, the ALJ must determine from the face of the hearing request whether the complaint 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 complaint. 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 “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 resolution and an effective due process hearing because it does not provide the other party with fair notice and makes it difficult or impossible for the other party to respond to the complaint in any substantive way.

Here, Parent’s complaint raises concerns about Student’s instructional time and the District’s denial of Parent’s request to provide Student Applied Behavior Analysis (ABA) therapy to Student during the 2023-2024 school year. The complaint alleges that Student has been diagnosed with Autism Spectrum Disorder (ASD) and prescribed 35 hours per week of ABA therapy by medical physicians. The complaint further alleges that, in May and June 2023, prior to Student’s kindergarten year, Parent requested that the District provide Student access to ABA supports in the classroom, including a one-to-one adult aide trained in ABA techniques. The complaint alleges that the District refused to provide the requested in-class ABA supports and sets out six “matters” for hearing, each referencing an Oregon administrative rule (or Oregon Senate Bill).⁴ Parent seeks an order allowing Student access to full days of school including direct ABA supplementary supports in the classroom, compensatory education, and attorney fees. Complaint at 2-9.

In the Motion, the District contends the complaint does not meet the minimum statutory requirements, because it does not provide sufficient factual details regarding how each alleged “matter” constitutes a violation of the IDEA and the referenced rule or law. The District asserts that, in the absence of this factual information (in particular the who, what, and when), the District is unable to meaningfully respond to the alleged violations. For the reasons set out below, the District’s challenge has merit.

⁴ In determining the sufficiency of the complaint, each identified “matter” is considered to be a separate claim. The complaint references OAR 581-015-2040 (Free Appropriate Public Education); OAR 581-015-2090 (Consent); OAR 581-015-2205 (IEP Team Considerations); OAR 581-015-2055 (Assistive Technology); OAR 581-015-2310 (Prior Written Notice); and Senate Bill 819 (2023) (relating to abbreviated school day programs).

First Matter

In the First Matter, the complaint cites OAR 581-015-2040 and alleges as follows:

The District has failed to provide a Free and Appropriate Public Education to [Student] by denying him an ABA supplementary support in the classroom in light of [his/her/their] Autism Spectrum Disorder diagnosis, medical prescription for ABA support, and educational needs.

Complaint at 5.

OAR 581-015-2040 sets out the general requirement that school districts “provide a free appropriate public education all school-age children with disabilities for whom the district is responsible[.]” While Parent’s complaint alleges that the District denied Student a free appropriate public education (FAPE) by denying “an ABA supplementary support” in the classroom, the complaint is lacking in context and detail. The complaint does not clearly describe the specific support requested, when and in what context the request was made, the District’s response to the request, or how the absence of this particular in-classroom support denied Student meaningful access to FAPE. The absence of facts related to the alleged denial of services and the alleged resultant denial of FAPE hinders resolution of the matter and the District’s ability to respond to the complaint in a meaningful manner. Accordingly, the First Matter does not meet the sufficiency standards for hearings brought under the IDEA.

Second Matter

The complaint cites OAR 581-015-2090 and alleges the following:

The District has refused [Student’s] request for in-class ABA support. In so doing, the District has failed to obtain the voluntary, informed consent of the parents to the IEP placement without in class ABA supplementary aids.

In violating the procedures described in OAR 581-015-2090, the District has (a) impeded [Student’s] right to a free appropriate public education; (b) has significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate education to [Student]; and (c) has caused a deprivation of educational benefits to [Student].

Complaint at 5.

OAR 581-015-2090 defines “consent”⁵ and outlines a school district’s obligation to

⁵ OAR 581-015-2090(1) states:

Consent means that the parent or adult student:

obtain parental consent prior to evaluating a student, providing the initial provision of services, and/or conducting a reevaluation of the student. As the District notes in the Motion, the complaint fails to state when the District should have obtained such consent (*i.e.*, which IEP meeting) and/or the nature of that consent (*i.e.*, for an initial evaluation, for initial provision of special education services, etc.) The complaint also fails to explain how the alleged violation OAR 581-015-2090 gave rise to a denial of FAPE, as the rule does not specifically require consent for educational placement. Because the complaint does not adequately articulate how and when the District failed to obtain required consent, and how the District's conduct violated substantive provisions of the IDEA, this Second Matter does not meet the sufficiency standards of OAR 581-015-2345(1)(a)(B)(iii) and must be dismissed.

Third Matter

Citing to OAR 581-015-2205, the complaint alleges:

The District has refused [Student's] request for in-class ABA support. In so doing, the District has failed to consider the academic, developmental and functional needs of [Student] where ABA supports the needs of [Student] relative to [his/her/their] specific disability.

Complaint at 6.

OAR 581-015-2205 identifies the factors that an IEP team must consider in developing, reviewing, and revising a student's IEP.⁶ As the District notes in the Motion, the complaint does not specify any information that Student's IEP team failed to consider or any discussion that the

(a) Has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought; and

(b) Understands and agrees in writing to the carrying out of the activity for which his or her consent is sought.

⁶ OAR 581-015-2205 provides, in pertinent part:

(1) In developing, reviewing, and revising the child's IEP, the IEP team must consider:

- (a) The strengths of the child;
- (b) The concerns of the parents for enhancing the education of their child;
- (c) The results of the initial or most recent evaluation of the child; and
- (d) The academic, developmental, and functional needs of the child.

(2) In developing, reviewing, and revising the child's IEP, the IEP team must consider the following special factors:

- (a) The communication needs of the child; and
- (b) Whether the child needs assistive technology devices and services.

IEP team was required to have that it did not have (for example, whether the child needs assistive technology devices and services, OAR 581-015-2205(2)(b)). The complaint alleges that the District refused the requested in-class ABA support for Student, but it does not allege that the IEP team neglected to consider or discuss any particular concern, recommendation, or required component of the IEP prior to that denial. Furthermore, as the District notes, the complaint fails to specify the IEP meeting(s) in which the alleged violation occurred and who was present for the meeting(s). Consequently, on its face, the Third Matter also fails to provide sufficient information for the District to meaningfully respond. This claim is also dismissed.

Fourth Matter

Citing to OAR 581-015-2055, the complaint alleges:

The District has refused [Student's] request for in-class ABA support. In so doing, the District has failed to consider [Student's] need for the assistive services relative to [his/her/their] specific disability in forming [his/her/their] IEP.

Complaint at 6.

OAR 581-015-2055(1) provides, in pertinent part:

School districts must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services or supplementary aids and services.

“Assistive technology device” is defined in OAR 581-015- 2000(2) and means:

[A]ny item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

“Assistive technology service” is defined in OAR 581-015-2000(3) and means “any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.”

As the District notes in its Motion, Parent has not, in setting out this fourth concern, identified any particular assistive technology device or service that the District refused or failed to provide to Student. The complaint fails to describe when this alleged violation occurred or who committed the violation and is devoid of any context for the alleged denial of assistive technology services. In the absence of specific details regarding Student's requested services and supports and the District's determination regarding the Student's needs for such assistance, the District is unable to meaningfully respond to this claim. Accordingly, the Fourth Matter must also be dismissed for failing to meet the requirements of OAR 581-015-2345(1)(a)(B)(iii).

Fifth Matter

Citing to OAR 581-015-2310, the complaint alleges:

The District has refused [Student's] request for in-class ABA support. In so doing, the District has failed to articulate the factors forming the basis of their decision to refuse to permit an outside ABA supplemental aid to [Student].

Complaint at 7.

OAR 581-015-2310 sets out the requirement for “prior written notice.” The rule requires school districts to give the parent prior written notice (PWN) when the district:

- (a) Proposes to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; or
- (b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

OAR 581-015-2310(2). The rule also requires that the PWN include certain information, such as: (a) A description of the action proposed or refused by the school district; (b) An explanation of why the district proposes or refuses to take the action; and (c) A description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action. OAR 581-015-2310(3).

As the District notes in the Motion, the complaint fails to explain how the District allegedly violated the PWN rule, *i.e.*, whether the District failed to issue a PWN when required, or whether the District issued a deficient PWN and if so, in what regard the notice was deficient. The complaint further fails to specify when, and in what context, the District “failed to articulate the factors forming the basis of their decision.” Complaint at 7. Again, the absence of factual detail in connection with this claim impedes the District’s ability to respond to in any meaningful way. This Fifth Matter must also be dismissed.

Sixth Matter

Finally, citing to “Senate Bill 819, 2023 Act, multiple sections” the complaint alleges, in part as follows:

The District has failed to obtain the voluntary, informed consent of the parents to [Student's] placement on an abbreviated school day of 75 minutes per day through March 21, 2024, and presently a half day. The District has further failed to insure the meaningful participation of the parents in discussions of the abbreviated school day placement in light of [Student's] medical diagnosis and prescription for ABA therapy.

From May 6, 2023 through the present, the District has failed to document or to offer at least one reasonable alternative placement that includes appropriate supports for [Student], in light of [his/her/their] specific disability, which could enable him to have meaningful access to the same number of hours of instruction and educational services that are provided to the majority of other students who are in the same grade within [his/her/their] resident school district.

From May 6, 2023 through present, the District has failed to form an abbreviated day program for [Student] which would support [his/her/their] return to a school day program that is not abbreviated, or in a way that would assist [his/her/their] progress toward individualized learning goals in light of the general education curriculum.

Complaint at 7-8. The complaint further alleges that the District violated SB 819 by: compelling Parent to “acquiesce to an abbreviated school day” for Student without necessary services and supports; failing to “make or to document reasonable efforts to provide meaningful access to the same number of hours of instruction and educational services to [Student]” that are provided to other students in the same grade in the District; unilaterally placing Student on an abbreviated school day without ABA supplementary supports; and by “maintaining a practice or policy which prevents a full day of Free and Appropriate Public Education for students diagnosed with Autism Spectrum Disorder who are also prescribed ABA therapy by medical professionals.” *Id.* at 8-9.

Senate Bill 819, enacted in 2023, modifies the requirements for “abbreviated school day programs.” The Act repealed ORS 343.161 and established a new framework for abbreviated school day programs, emphasizing meaningful access to instructional hours. The Act includes updated definitions, updated requirements for informed parental consent and regular IEP and 504 meetings, and provisions addressing accountability and enforcement. However, as the District notes in the Motion, there is nothing in Senate Bill 819 that gives a student, parent, or guardian a private right of action enforceable under the due process hearing provisions of ORS 343.165 and OAR 581-015-2345.⁷

Section 5 of Senate Bill 819 includes a separate enforcement mechanism for alleged violations of the Act’s requirements pertaining to a student’s placement in an abbreviated school day program. The Act authorizes a parent to revoke consent for the placement of a student with a disability on an abbreviated school day program and to file a complaint with the Department where there is cause to believe the district is not in compliance with the Act’s provisions. The Act provides for a Department investigation and determination.⁸ However, there is nothing in

⁷ ORS 343.165 and OAR 581-015-2345 require a due process hearing where the parent contests “the determination of the school district concerning the identification, evaluation, individualized education program, educational placement or the provision of a free appropriate public education to the child.”

⁸ The Act authorizes the Department, on a finding that the district is not in compliance, to order that “any students named in the complaint” be provided with meaningful access to the same number of hours of instruction and educational services as the majority of other same grade students in the district. The Act

the Act requiring an IDEA due process hearing when a parent revokes consent for an abbreviated school day program or when a parent disagrees with an IEP team's decision to place the student on an abbreviated school day program. Accordingly, in the absence of jurisdiction and authority to address Parent's concerns about the District's compliance with the provisions of Senate Bill 819, the Sixth Matter must be dismissed as well.

Pursuant to OAR 581-015-2350(3), Parent may amend a hearing request only if: (A) the District consents or (B) the ALJ grants permission. Pursuant to OAR 581-015-2350(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. Pursuant to OAR 581-015-2350(3), this ruling and order grants Parent leave to amend if Parent deems it appropriate. However, any such amendment to the complaint herein must be filed by the deadline set out in the ruling and order below.

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 April 22, 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 **May 17, 2024**. If Parent elects to file an amended due process complaint, all relevant timelines will begin anew as of the date of filing.

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**.

further authorizes the Department to withhold State School Fund money and to require the district provide compensatory education to the student(s) subject to the order that is equivalent to at least one hour of direct instruction for every two hours of instruction that were lost due to an abbreviated school day program placement in violation of the bill. Senate Bill 819, Section 5 (1) and (2).

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 3, 2024, I mailed the foregoing RULING GRANTING DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY OF REQUEST FOR HEARING AND FINAL ORDER OF DISMISSAL issued on this date in OAH Case No. 2024-ABC-06482.

By: Certified Mail and Electronic Mail

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