

**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 CHALLENGING SUFFICIENCY OF DUE PROCESS COMPLAINT AND FINAL ORDER OF DISMISSAL)) OAH Case No. 2024-ABC-06672) Agency Case No. DP 24-018
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On August 27, 2024, Parents, on behalf of Student, filed a request for a due process hearing (hearing request) with the Oregon Department of Education (Department). In that complaint, Parents 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 federal regulations and state administrative rules. On August 27, 2024, the Department referred the complaint to the Office of Administrative Hearings (OAH), which scheduled a pre-hearing conference for September 30, 2024. The OAH assigned Senior Administrative Law Judge (ALJ) Joe L. Allen to preside at hearing.

On September 10, 2024, counsel for the District, Erin Burris, submitted Portland School District 1J’s Motion Challenging Sufficiency of Due Process Complaint (motion). In the motion, the District asserts that each allegation contained in Parents’ 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 581-015-2345¹ 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:

¹ 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) 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.

Emphasis added.

OAR 581-015-2350² 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

² 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 a parent's 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). 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 identified above, the ALJ must dismiss the hearing request. 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)(ii) and (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. Whereas 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 adequate notice and makes it very difficult, if not impossible, for the other party to respond to the complaint in any substantive way.

The District's motion challenges the sufficiency of Parents' hearing request asserting that it fails to include the requisite information required by federal and state regulations. Upon review of the complaint, I agree that the allegations are stated with insufficient detail either to allow the parties to resolve this matter through mediation or to allow the District to prepare for a due process hearing. Parents' request for a due process hearing fails to comply with the minimum requirements of 20 U.S.C. § 1415(b)(6)(A)(ii) and OAR 581-015-2345(1)(a)(B)(ii) and (iii), because it does not provide a sufficient description of the nature of the problems, including facts relating to the problems asserted. Moreover, the vague nature of Parents' allegations and supporting facts fail to establish Student was a resident of the District at all relevant times. As identified above, Parent's request for a due process hearing must provide a description of the nature of the problem of Student and facts relating to the issue or issues caused by the District's action or inaction. It is irrelevant that a party might be able to infer the underlying facts or the gravamen of a complaint from prior interactions or documents outside the complaint. A due process hearing request that lacks sufficient detail about the nature of the dispute hinders resolution of the dispute and impedes an effective due process hearing should mediation prove unsuccessful.

In this matter, Parents filed a 68-page complaint along with a 61-page addendum styled a "Timeline of Fact." Parents' complaint contains more than 185 enumerated paragraphs covering Student's educational experience from third through tenth grades. In addition, the complaint contains a disjointed recitation of facts that indicate Student was a resident of one or more additional school districts during at least some periods covered by the complaint. Parents' alleged violations cover approximately 33 pages with nine separate categories of claims, many of

which contain numerous subheadings.³ The District's challenge to each is addressed in turn.

Parents' first claim asserts violations of procedural safeguards generally, and specifically asserts the District failed to issue prior written notice before making changes to Students Individualized Education Program (IEP). Complaint at 32-34. As to this claim, the District asserts Parents' claims that the District violated procedural requirements by not providing prior written notice on certain occasions fail to describe those incidents with sufficient particularity for it to ascertain when the alleged incidents occurred. Motion at 4. Specifically, the District argues this disjointed nature of the complaint makes it impossible to even ascertain whether the alleged events are within the applicable statute of limitations. I agree. This claim fails to provide the who, what, where, and when of Parents' allegations and thus is insufficiently pled. The complaint fails to provide any clear indication of when the IEP referenced was implemented and/or changed by the District and what, if any, changes were made without proper notice. From the face of the complaint, the ALJ cannot determine the date or specifics of any action by the District requiring a prior written notice. Moreover, the ALJ is unable, from the face of the complaint, to ascertain whether Student was a resident of the District for purposes of this claim. Accordingly, this claim fails to satisfy the notice requirements set out in 20 U.S.C. § 1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(ii) and (iii) and must be dismissed.

Parents' second claim is titled "Evaluation" and asserts, "[the District] failed to include Parents when in the creation of a worksheet for BSP [Behavior Support Plan] utilized without Parents' consent." Complaint at 35. The District argues that this claim does not reflect a violation of the IDEA or Oregon law and therefore must be dismissed. Upon review of the complaint, I agree. Parents' voluminous complaint fails to connect any facts to this allegation in a manner that would permit the District, or the ALJ, to ascertain who did what and when they did it. Moreover, if the District did, in fact, create a behavior worksheet without Parent input, the complaint fails to demonstrate that this is a failure on the part of the District to properly evaluate Student or that Parent was otherwise entitled to participate in the creation of the worksheet. Finally, there is no information in this allegation identifying when the District engaged in the complained-of behavior. Again, this claim fails to satisfy the notice requirements set out in 20 U.S.C. § 1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(iii) and therefore must be dismissed.

Parents' third claim asserts a failure to timely evaluate and determine eligibility for Student, resulting in a loss of FAPE for at least six years. Complaint at 35. In its motion, the District correctly points out that Parents' due process complaint fails, throughout the entirety of its 68 pages, to identify when the District failed to conduct necessary evaluations of Student. Perplexingly, Parents' due process complaint alludes to one or more IEPs in place for Student during the numerous years covered, implying that Student was evaluated and found eligible for specially designed instruction and/or related services at some point. Unfortunately, the complaint lacks the requisite detail demonstrating when such evaluation occurred and how/why

³ As an example, Claim 6, titled "IEP Content," contains subheadings A through J. Similarly, Claim 7, titled "Timelines and Implementation," contains subheadings A through D, many of which contain additional levels of paragraph numbering following no discernable or cogent format. Many of the subheadings or sub-level paragraphs are incomplete sentences with little to no relevant detail. *See* Due Process Complaint at 39-43.

those evaluations were untimely and/or insufficient. The fragmented nature of Parents' complaint makes it nearly impossible for the District or the ALJ to ascertain when the alleged failure(s) occurred. Moreover, because the complaint appears to concede Student was a resident of a different school district for at least a portion of the period addressed, it is impossible to determine which school district bears responsibility for the alleged failure. For these reasons, this claim fails to satisfy the notice requirements set out in 20 U.S.C. § 1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(ii) and (iii) and therefore must be dismissed.

Parents' fourth claim asserts the District "failed to provide meeting notice within a reasonable time." Complaint at 35. In the motion, the District argues, "[t]he facts pertaining to the claim are unclear and describe several dates and events, without any clarity to permit the School District to understand what meeting(s) lacked sufficient notice." Motion at 6. Based on a review of Parents' complaint, I agree. While the complaint identifies certain specific dates during the 2023-2024 school year, it contains no detail as to the type or reason for the purported meetings. Parent's exhaustive narrative identifies numerous interactions between Parents and District personnel, not all of which related to the provisions of Student's IEP. The IDEA's requirements related to prior written notice – specifically notice related to covered meetings – apply only to certain events, not every meeting a school district may schedule with a parent. *See* OAR 581-015-2190 (addressing the requirements of meeting notice related to the identification, evaluation, IEP, educational placement, and provision of FAPE to a child). Parents' complaint fails to allege facts sufficient to determine whether any of the proposed meetings were covered by the IDEA's notice requirements. Moreover, the complaint alludes to meetings between Parents and the District that may have occurred while Student was not a resident of the District but anticipated returning at a later date. Thus, this claim fails to satisfy the notice requirements set out in 20 U.S.C. USC § 1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(11) and (iii) and therefore must be dismissed.

Parents' fifth claim, titled "IEP Team," asserts "[the District] violated [the] IDEA by preventing meaningful parent participation." Complaint at 36. The complaint then goes on to assert a litany of "facts" occurring sometime between 2020 and 2024 which include excluding one Parent and his/her advocate from the room during a Department facilitated proceeding. In addition, the complaint alleges vague instances of District personnel denying Parent access to school grounds, suspicions of District personnel diverting Parents' emails, general allegations of failures to consider Parents' concerns and to schedule meetings at mutually agreeable times, placing limitations on Parent's visits to campus, and failure to "allow Parent to provide or participate in staff training * * *." Complaint at 36-38. In its motion, the District correctly points out that Parents' allegations are stated generally, with no temporal locus to a period within the relevant statute of limitations. Moreover, it is unclear from the recitation of supporting facts whether Student was a resident of the District during each of the alleged offenses. The complaint also vaguely alludes to the District's failure to provide educational records. Again, the allegation lacks any detail to establish when Parent(s) made such a request or even to establish Student was a resident of the District at the time of the request. This claim fails to satisfy the notice requirements set out in 20 U.S.C. § 1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(ii) and (iii) and therefore must be dismissed.

Parents' sixth claim, titled "IEP Content" includes 10 sub-headings, some with additional

sub-paragraphs purporting to support the allegation that Student's IEP is somehow insufficient. The complaint lists those sub-headings as follows:

- A. The family did not participate in the content of the most recent IEP, created on 6/11/2024, and disagrees with its content. It was not made collaboratively with informed consent and understanding.**
- B. The team could not consider present levels of function at the 6/11/2024 meeting because parent concerns were not placed on the IEP as requested.**
- C. [The District] documented false information in the June 2024 meeting minutes claiming Tosh Coleman-Butler and Jacob Tolbert were present.**
- D. June IEP mentions mediation in accommodations.**
- E. [The District] Claimed the Student did not demonstrate recoupment, denying the student EYS services over the Summer of 2024. In the Summer of 2023, due to delays EYS was not discussed.**
- F. Most recent IEP is not culturally or linguistically appropriate.**
- G. Lack of understanding of goals and what they meant resulted in Students losing another year of data on appropriate goal intentions.**
- H. The transition planning information is inaccurate and does not come from conversations and time spent with the Student.**
- I. Any statements of Students' grades are a reflection of IDEA violations**
- J. The justification for non-participation never truthfully acknowledges why full participation is not possible.**

Complaint at 39-40 emphasis original. As the District points out in its motion, the complaint is devoid of any actual allegation that the IEP fails to offer FAPE or that the District failed to implement the IEP as drafted. Rather, the headings above and scant supporting statements contained in the complaint appear to express Parents' points of dissatisfaction in drafting, rather than content or implementation. Those statements, while expressing Parents' preference for additional or alternate information and language, are insufficient to raise a legal or factual issue to be adjudicated at hearing. While the IDEA does not contemplate or require expert pleading from *pro se* parties, it does require, at a minimum, a description of the nature of the problem of Student and facts relating to the issue or issues caused by the District. Regarding this allegation, the pleading requirements mandate some identification of the perceived deficiencies in the IEP or the District's implementation thereof. Without more, Parents' sixth claim fails to satisfy the notice requirements set out in 20 U.S.C. § 1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(iii) and therefore must be dismissed as insufficient.

Parents' seventh claim, titled "Timelines and Implementation" includes nine separate sub-headings, many of which contain additional enumerated paragraphs purporting to establish facts related to the allegation that the District failed to provide Student with a FAPE. The complaint lists those sub-headings as follows:

- A. [The District] failed to provide Student a free and appropriate public education (FAPE).**
- B. [The District] failed to provide appropriate services.**
- C. The parent learned IEP transition planning helps Students plan for life after high school. It could have been started at age 14 and was never discussed.**
- D. Parent input was requested and provided, and, with closed-loop communication, Robin at [the District] said it would get "to the right person." It did not.**
- E. [The District] did not offer a placement option for Student for 2024-2025 until August 22, 2024.**
- F. Failure to implement IEP immediately after manifestation determination (5/7/24)**
- G. [The District] failed to consider modification of BSP already in IEP, unutilized and proven to work pushing family to FBA changing [Student's] accommodations**
- H. [The District] delayed services during the 2022-2023 year, is unprepared to provide special education and related services to Students at the start of the 2024-2025 school year, and was unprepared to provide services the 2023-2024 year**
- I. [The District] shared inaccurate information in an email to staff, which was meant to be a quarterly update on managing escalating behavior, and did not provide initial training.**

Complaint at 41-44 emphasis original. Despite Parents' inclusion of nearly 40 sub-paragraphs purporting to support the allegations above, the complaint is devoid of any detail identifying requirements of an IEP that the District failed to implement. As an example, in support of the allegation that the District failed to provide Student a FAPE, Parents allege the District "failed to provide services to intervene and train key staff in bias, ableism, and Student disabilities disproportionality * * *." Complaint at 41. The complaint contains no detail on what training, if any, was required by the IEP and when that IEP was effective. The supporting paragraphs allude to both the 2023-2024 and 2022-2023 school years. Under the sub-category of "failure to

provide appropriate service” the complaint fails to identify any services actually mandated by Student’s IEP. It is impossible to ascertain, from the face of the complaint, the effective date of any IEP referenced by Parents. Moreover, the complaint alleges the District failed to offer a placement for the 2024-2025 school year until August 2024. It is unclear how this results in a violation as August 2024 was prior to the start of the 2024-2025 school year. Parents’ complaint is silent on this issue. Moreover, the complaint fails to allege the proposed placement was inappropriate. The remainder of Parents’ assertions under this claim suffer from similar lack of detail sufficient to identify the nature of the problem of Student and facts relating to the issue or issues caused by the District’s action or failure to act. Additionally, without additional specificity as to the period in issue, it is unclear whether Student was a resident of the District during any or all times alleged. As such, Parents’ seventh claim fails to satisfy the notice requirements set out in 20 U.S.C. USC § 1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B) (ii) and (iii) and therefore must be dismissed as insufficient.

Next, the complaints’ eighth claim asserts, over more than five pages, that the District failed to provide Student a FAPE in the least restrictive environment (LRE). Despite the volume of statements included in the complaint attempting to support this allegation, Parents failed to include any information related to Student’s actual placement, including when the disputed placement was implemented, the amount, if any, of general education versus special education placement, or how the placement is more restrictive than necessary to provide FAPE. While the complaint alludes to a “placement change” occurring in June 2024, the complaint is devoid of details related to when that placement was meant to take effect and/or why that placement fails to constitute LRE for Student. Moreover, in the complaint, Parents also reference Student’s placement at Serendipity. Parents’ timeline indicates Student attended Serendipity in or about 2021. It is unclear from the face of the complaint whether Serendipity is a school within the District or whether Student attended this school through an IEP drafted by another school district. Parents’ eighth claim fails to satisfy the notice requirements set out in 20 U.S.C. § 1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B) (ii) and (iii) and therefore must be dismissed as insufficient.

Finally, Parents’ ninth claim is titled “Disciplinary Removals.” Through that claim, Parents’ take issue with the District suspending Student on multiple occasions for profanity and other inappropriate remarks to peers and staff based on race and gender identity as well as minor property damage issues. Parents’ narrative concedes that the District conducted more than one manifestation determination (2019 and 2024) for Student’s outbursts and developed a Behavior Intervention Plan for Student. *See* Complaint at 10, 12, 15, and 44. From the face of the complaint, Parents do not appear to challenge the District’s determination that Student’s conduct was inappropriate and deserving of suspension. Rather, the dispute appears to be with the District’s alleged failure to conduct multiple manifestation determinations until it determined Student’s violations of the code of conduct could be excused based on his/her disability. As pled, the complaint fails to assert the District violated the IDEA by suspending Student on multiple occasions after concluding his/her behavior was not a manifestation of his/her disability. The IDEA and implementing state regulations permit disciplinary removals of students with disabilities for up to 10 school days without the need for a manifestation determination and beyond that period so long as certain procedural safeguards are observed. *See* OAR 581-015-2405 – 2420. Parents’ complaint fails to include sufficient detail to permit the District or the

ALJ to understand the alleged violation of the IDEA or its implementing regulations. Parents' claims of "disciplinary removals" are insufficient as such removals do not constitute a *de facto* violation of the IDEA or otherwise result in a denial of FAPE. Parents' ninth claim fails to satisfy the notice requirements set out in 20 U.S.C. § 1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B)(iii) and therefore must be dismissed as insufficient.

Because Parent's due process complaint fails to meet the requirements of 20 U.S.C. § 1415(b)(7)(A)(ii) and OAR 581-015-2345(1)(a)(B), the complaint must be dismissed in its entirety.

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. Pursuant to OAR 581-015-2350(4), if a party obtains consent or permission and 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.

RULING and ORDER

The District's Motion Challenging Sufficiency of [the] Due Process Complaint is **GRANTED**. The due process complaint filed by Parents on August 27, 2024 is insufficient and therefore **DISMISSED**.

The ALJ hereby grants leave for Parents to file an amended due process complaint. If Parents elect to amend the complaint, the amendment must be filed no later than September 27, 2024. Any amended complaint must be complete and sufficient on its face. An amendment to the August 27, 2024 complaint hereby deemed insufficient is not acceptable to satisfy the requirements of the amended complaint permitted by the 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.

/s/ Joe L. Allen

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 September 13, 2024 I mailed the foregoing RULING GRANTING DISTRICT'S MOTION CHALLENGING SUFFICIENCY OF DUE PROCESS COMPLAINT AND FINAL ORDER OF DISMISSAL in OAH Case No. 2024-ABC-06672 to the following parties.

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