

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

IN THE MATTER OF THE EDUCATION OF STUDENT AND MCMINNVILLE SCHOOL DISTRICT 40) RULING ON DISTRICT’S MOTION FOR) DETERMINATION OF SUFFICIENCY) OF REQUEST FOR HEARING)) OAH Case No. 2024-ABC-06708) Agency Case No. DP 24-019
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On September 26, 2024, Parents filed a request for a due process hearing (Complaint) with the Oregon Department of Education (Department). In the Complaint, Parents alleged that the McMinnville School District 40 (District) engaged in substantive and procedural violations of the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. §1400 *et seq.* and the corresponding administrative rules when it failed to evaluate Student in all suspected areas of disability in a timely manner, failed to provide a Free Appropriate Public Education (FAPE) to Student in the least restrictive environment, failed to include Parents in placement decisions, and failed to implement Student’s Individualized Educational Plan (IEP) and Behavior Support Plan (BSP) appropriately and disciplined Student for behaviors related to Student’s disability.

On September 26, 2024, the Department referred this matter to the Office of Administrative Hearings (OAH) for a due process hearing. Senior Administrative Law Judge (ALJ) Kate Triana was appointed by the Oregon Department of Education to conduct the due process hearing and issue a Final Order.

On October 1, 2024, the District filed District’s Motion for 45-Day Interim Placement Pending an Expedited Hearing. ALJ Triana ruled that the hearing would be bifurcated, with an expedited hearing to address the District’s Motion and a non-expedited hearing to address Parents’ Complaint.

The parties participated in a resolution session on October 8, 2024.

Pursuant to OAR 581-015-2360(3), ALJ Triana conducted a prehearing conference, by telephone, on October 9, 2024. Rachel Laing and Emily Teplin Fox, attorneys at law, appeared on behalf of Parents. Parent Kristina Edwards also appeared. Taylor Kinch and Joel Hungerford, attorneys at law, appeared on behalf of the District. ALJ Triana scheduled the expedited hearing for November 5, 2024, and the non-expedited hearing for November 25 & 26, 2024.

On October 11, 2024, counsel for the District submitted District’s Partial Sufficiency Challenge of Student’s Due Process Complaint (Challenge). In the Challenge, the District asserts that Parents’ request for hearing fails to meet the requirements of OAR 581-015-2345. On October 14, 2024, counsel for Parents submitted Student’s Response to District’s Partial

Sufficiency Challenge (Response to Challenge).

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 to students who qualify for specially designed instruction, related services, or accommodations under the IDEA.

The Department has promulgated administrative rules that mirror the federal regulations applicable to hearing 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). 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).

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. 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.

In the Complaint, Parents' counsel provides background information on Student and then identifies four specific issues to be resolved at hearing:

1. McMinnville School district denied [Student] a Free Appropriate Public Education by failing their Child Find Duty and delaying evaluation of eligibility for special education[.] * * *
2. McMinnville School District has denied and continues to deny [Student] a Free Appropriate Public Education in the Least Restrictive Environment. * * *

3. McMinnville School District violated OAR 581-015-2250, which states that the placement of a child must be determined by a group of persons, including the parents. * *
4. McMinnville School District failed and continues to fail to implement [Student's] IEP and BSP and routinely disciplines [Student] for behaviors relating to [Student's] disabilities.

Complaint at 8-9.

The District's motion challenges the sufficiency of Parents' hearing request as to issue #4 (failing to implement Student's IEP and BSP and routinely disciplining Student for behaviors related to Student's disability), asserting that it fails to include the requisite information required by federal and state regulations. The District argues that the Complaint does not address specifically when accommodations were not implemented, which school staff member failed to implement the accommodations, or in what context they were allegedly not implemented.¹ Furthermore, the District argues, the Complaint fails to address what impact the lack of implementation has had on Student or how that failure resulted in a denial of FAPE.

The Complaint provides the following details specific to the fourth issue raised:

[Student] was not provided necessary accommodations, supplementary aids, and services that [Student] was entitled to pursuant to [Student's] IEP and BSP. Among other things, [Student] was not provided a timekeeping device to assist with transitions, a non-verbal sign or signal to communicate [Student's] needs to [Student's] teacher, or a schedule to bring home to allow [Student's] parents to help prompt [Student] prior to taking [Student] to school each day.

Complaint at 9. While this portion of the Complaint viewed in isolation may not provide sufficient details about the alleged violations to properly ascertain the "who, what, when, where and why" - when viewed as a whole, the Complaint contains sufficient facts and details regarding the nature of the problem to meet the requirements of OAR 581-015-2345(1)(a)(B)(iii).

The Complaint identifies a timeline, alleging that Student enrolled in the District at the start of the 2023/2024 school year, an informal support plan was developed in March of 2024, and a formal IEP was developed in May of 2024. The Complaint alleges that Student struggled with the transition from summer to 2024/2025 school year and that during that time, the school failed to implement Student's IEP and BSP, or note which interventions were and were not working. Specifically, the Complaint provides:

¹ Pursuant to OAR 581-015-2350(2), the District's challenge was evaluated only on the face of the Complaint. It is worth noting, however, that many of the details the District argues must be included in the Complaint are, as Parents' counsel points out, "uniquely only known to the District - i.e. extremely specific details as to what, when, who, how, and where they implemented the accommodations." Response to Challenge at 3.

Among other required supports and services required, [the District] failed to provide [Student]: a visual timer to signal transitions (i.e. a timer or watch to take to recess and lunch); sensory tools (i.e. a band on [Student's] chair that [Student's] can kick while at [Student's] desk; something soft on [Student's] desk to help with calming); hand gestures or other non-verbal ways (i.e. a desk marker) to signal a need for a break or help; movement breaks and a place and opportunity to move around physically when needed; [and] consistent teacher check-ins especially to ensure comprehension of instructions.

Complaint at 6.

The Complaint also alleges that the school “continuously disciplined and suspended [Student] for disability related behaviors,” including disciplinary referrals, removal from school, suspensions, or the intervention of a school safety officer. Complaint at 2. The Complaint further alleges that the District denied Student FAPE by failing to fully implement Student's IEP.

As described above, the Complaint provides details as to the “who, what, when, where, and why.” In short, it alleges that school personnel failed to implement aspects of Student's IEP and BSP (including failing to provide Student with visual timers, sensory tools, the use of non-verbal signals, movement breaks and locations, and consistent teacher check-ins), beginning at the start of the 2024/2025 school year, resulting in Student exhibiting unwanted behaviors directly related to Student's disability. Furthermore, the Complaint alleges that instead of implementing strategies in Student's IEP and/or BSP, the school disciplined Student for these behaviors, resulting in a denial of FAPE and a violation of the IDEA. Thus, the Complaint contains sufficient details and facts regarding the nature of the problem to allow the District to prepare for mediation and/or the due process hearing. Therefore, the District's Partial Sufficiency Challenge of Student's Due Process Complaint is denied. The matter will proceed to hearing as scheduled.

RULING

The District's Partial Sufficiency Challenge of Student's Due Process Complaint is **DENIED**.

Kate Triana

Senior Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF MAILING

On October 16, 2024, I mailed the foregoing RULING ON DISTRICT'S MOTION FOR DETERMINATION OF SUFFICIENCY OF REQUEST FOR HEARING issued on this date in OAH Case No. 2024-ABC-06708.

By: Electronic and Certified Mail

[REDACTED]

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