



## 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 and/or accommodation under Section 504.

The Department has promulgated administrative rules that mirror the federal regulations applicable to hearings under the IDEA. OAR 581-015-2345<sup>3</sup> 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.

\* \* \* \* \*

(c) A party may not have a hearing until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (1)(a)(B) \* \* \*.

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<sup>3</sup> The requirements of OAR 581-015-2345(1)(a)(B) mirror the federal requirements identified in 34 C.F.R. § 300.508(b) enacted pursuant to 20 U.S.C. § 1415(b)(7)(A).

OAR 581-015-2350<sup>4</sup> 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 581-015-02345(1)(c).<sup>5</sup>

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)(i) through (iii) is to give the school district the “who, what, when, where, and why” details about the reasons a parent is requesting a due process 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.

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<sup>4</sup> The requirements of this rule are nearly identical to the provisions of 34 CFR § 300.508(d).

<sup>5</sup> See also 34 C.F.R. § 300.508(c).

As an initial matter, the ALJ notes that the complaint fails to include two elements required for a sufficient due process complaint – the child’s address and the name of the school the child is attending.<sup>6</sup> The due process complaint identifies both parents’ individual mailing addresses. According to that information, Student’s mother resides in Portland while Student’s father resides in the neighboring city of Fairview, Oregon. There is no indication where Student resides and the only information pertaining to Student’s school attendance is the statement that Student “was attending Jefferson High School through the Right to Return Program.” Complaint at 1. According to the complaint, Student attended Jefferson High School for at least a portion of the 2023-2024 School year. The complaint fails to identify the specifics of the identified Right to Return program and the ALJ is unaware of such a program covered by the IDEA or its implementing regulations – including state administrative rules. Moreover, without the required information pertaining to the residence of Student, it is impossible to ascertain if the District is a proper party to this matter or if another school district – perhaps one serving residents of Fairview – is responsible for the provision of special education and related services to Student. Parents’ request for a due process hearing fails to comply with the minimum requirements of 20 U.S.C. § 1415(b)(7)(A)(ii)(I) and OAR 581-015-2345(1)(a)(B)(i) and (ii) and is therefore insufficient.

In this matter, the District asserts the allegations in the complaint do not describe Parents’ concerns with sufficient detail to allow the District to ascertain the issues raised. Thus, the District argues that the complaint fails to adequately describe the nature of the problem(s) and does not contain sufficient facts relating to the problem sufficient to set forth a violation of the IDEA. *See* motion at 4-5.

Parents’ complaint identifies the period at issue as beginning on or about August 26, 2024 and continuing up to the time of filing the complaint. *See* complaint at 2.<sup>7</sup> The complaint identifies a June 11, 2024 Individualized Education Program (IEP) developed for implementation at Burlingame Creek School. Parents then assert Burlingame is not appropriate for Student and state that they requested for the District to implement a July 2023 IEP. The complaint fails to articulate any deficiencies with either the June 11, 2024 IEP or the proposed placement at Burlingame. Moreover, the complaint fails to show why the July 2023 IEP is more appropriate. In fact, the complaint contains no details of either IEP. Additionally, the complaint fails to indicate when they made the request to implement the July 2023 IEP or when the District denied that request. The complaint contains some allusions to a behavior support plan (BSP) – which may or may not be a part of one or both IEPs – but fails to contain any information pertaining to

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<sup>6</sup> While not specifically identified as deficiencies in the District’s motion, OAR 581-015-2350(2) requires that 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. The language of the rule does not limit a determination of sufficiency to the issues raised by a school district. Here, the ALJ has determined it is appropriate to identify deficiencies not raised by the school district to avoid repetition of such errors in any amended complaint.

<sup>7</sup> The complaint contains the follow sentence under the heading Timeline, “Parents complaint raises issues of events and harm *since initiating a due process hearing request with Portland Public School District \* \* \* on 8/26/2024.*” Complaint at 2, emphasis added. While the complaint contains facts occurring outside that period, the ALJ considers such facts to be provided for context and not in contradiction to Parents’ express limitation on the period at issue.

the District's refusal to implement the BSP or any alleged modifications to that document with which Parents disagree. Thus, to the extent Parents allege a denial of FAPE based on Student's IEP or any proposed placement, the complaint 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 must be dismissed.

The complaint also asserts "[t]he Student is seeking pendency at Roosevelt High School (RHS)[.]" Complaint at 2. The ALJ interprets the term "pendency" as used in the complaint to refer to the IDEA's maintenance of placement provision found at 20 U.S.C. § 1415(j), ORS 343.177(1), and OAR 581-015-2360(5)(a), commonly referred to as the stay-put provision. The applicable statutes and rules pertaining to the stay-put provision allow a student to remain in his/her then-current educational placement. In this case, the complaint contains no facts indicating Student was ever placed at RHS and fails entirely to identify any current educational placement for Student. Moreover, the stay-put provision is a procedural safeguard enacted during the pendency of an administrative or judicial proceeding and thus does not serve as an independent issue for hearing.

The complaint also asserts, "[t]he District remained silent on requests to ensure all staff received training on the Student's Managing Escalation Cycle." Complaint at 3. While the complaint states this was a requirement of the July 2023 IEP, it does not assert that the District failed to provide any training to staff or utilize techniques for managing Student's behavioral escalations identified in his/her IEP. Rather, the complaint merely alleges the District did not respond to Parents' requests to "ensure" all staff received training. This vague assertion is insufficient 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).

Additionally, the complaint asserts the District failed to provide one or more prior written notices (PWNs) to Parents "for not providing services or requests for services for [Student's] individualized education planning needs and by resisting family's due process hearing request \* \* \*." Complaint at 5. This ambiguous assertion fails to identify when the District failed or refused to provide services or when Parents made any request for service which Parents believe required a PWN under 34 C.F.R. § 300.503 or OAR 581-015-2310. Again, the assertion, without more, is insufficient 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).

Similarly, the remainder of Parents' eight-page due process complaint fails to assert facts sufficient to raise one or more cognizable issues under the IDEA or related state statutes and administrative rules. Accordingly, Parents' complaint fails to meet the requirements of OAR 581-015-2345(1)(a)(B) and must be dismissed pursuant to OAR 581-015-2345(1)(c).

### **RULING and ORDER**

Portland School District 1J's Motion Challenging Sufficiency of October 3, 2024 Due Process Complaint is **GRANTED**. The due process complaint filed by Parent on October 3, 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 close of business<sup>8</sup> on October 30, 2024. Any amended complaint must be complete and sufficient on its face. A separate amendment or supplemental pleading incorporating the October 3, 2024 complaint hereby deemed insufficient is not acceptable to satisfy the requirements of the amended complaint permitted by the ruling and order. If Parents elect to file an amended due process complaint, all relevant timelines will begin anew as of the date of filing.

/s/ Joe L. Allen

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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.

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<sup>8</sup> Close of business for the OAH is 5:00 p.m. Pacific Time.

**CERTIFICATE OF MAILING**

On October 23, 2024 I mailed the foregoing RULING GRANTING PORTLAND SCHOOL DISTRICT 1J'S MOTION CHALLENGING SUFFICIENCY OF REQUEST FOR HEARING AND FINAL ORDER OF DISMISSAL in OAH Case No. 2024-ABC-06728 to the following parties.

By: Electronic and Certified Mail

[REDACTED]  
[REDACTED]  
[REDACTED]  
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