

(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 581-015-2350² 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 hearing occurs.

(4) If a party files an amended hearing request, the applicable timelines for the

² The requirements of this rule are nearly identical to the provisions of 34 CFR section 300.508(d).

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 581-015-2350(3).

The purpose for the notice requirements set out in 20 USC section 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 its motion, the District first contends that Parent did not include Student’s address. In the hearing request, Parent wrote “same as above” for Student’s address. Immediately above that section, Parent included their own name and residential address. This is reflected on the copies of documents the District included in its own motion. Parent’s indication that Student’s address is the same as Parent’s address is sufficient to disclose to the District the required information about Student’s residence.

The complaint consists of a Department form completed by hand and additional typewritten addendum completed by Parent’s counsel. On the handwritten form, Parent marked boxes indicating that the District violated the IDEA under “Evaluation,” “Educational Placement,” and “the Provision of a [FAPE].” Parent also wrote the following: “Concerns of current placement plan. IEP [Individualized Educational Plan] re[:] modification. Available resources. Concerns of current educators[’] support and lack of support.” Complaint at 1. In the area for Proposed Solutions, Parent wrote, “IEP meeting facilitation/modification. One on one support. Re[-]evaluation of proposed placement.” Hearing request at 2. None of these generalized allegations includes sufficient detail (such as the relevant IEP, specific concerns or events that denied Student a FAPE, evaluations the District should have performed, supports or accommodations the District failed to provide, or a timeline of events) to allow a meaningful response from the District.

However, the typed addendum contains several more specific allegations. First, Parent alleges that, on September 25, 2024, a staff member made a false report that Student was threatening another student with a rock. Parent asserts that Student was only carrying a juice box, and that the report was made due to racial discrimination, as Student is a brown-skinned African American in a school with primarily light-skinned European American students. Complaint at 3. While this allegation specifies the date, it does not indicate how this incident implicates Student’s access to FAPE. Racial discrimination is unacceptable, but the allegation as

presented does not make a claim cognizable under the IDEA.

Parent next alleges that Student had a verbal altercation with another student, and that staff broke up the altercation before it became physical. The allegation continues that Student came home later that day with a bloody lip and blamed a speech pathologist for punching Student in the mouth. Complaint at 3. Parent does not specify when this allegedly occurred and does not directly accuse the speech pathologist for physically disciplining Student. Insofar as Parent intends to accuse District staff of physical assault upon Student, the issue would more appropriately be addressed by criminal complaint, tort claim, and/or a report to appropriate licensing bodies. Parent does not indicate what action Parent took (if any) to allow the District to address Parent's concerns. This allegation thus lacks sufficient detail to allow the District to respond.

Parent also alleges that Student has a diagnosis of ADHD (attention deficit hyperactivity disorder), and that Student was interrupted by another student while playing tetherball, apparently at District staff's direction. Counsel asserts that staff at Student's school accommodates the "connect and correct" needs of its white students with ADHD but did not accommodate Student. Complaint at 4. Again, there is no information about when this incident occurred or how the failure to "connect and correct" in this instance denied Student a FAPE. The allegation also lacks any other relevant details, such as whether this is an accommodation required by Student's IEP.

Parent next contends that Student is the victim of bullying by other students but is blamed by District staff for retaliating. Complaint at 4. Again, the allegation contains no information about when this occurred, when (if ever) Parent notified the District of these allegations, or any response by the District to remedy the situation. This allegation also lacks any information about functional behavioral assessment (FBA), behavior support plan (BSP), or behavior intervention plan (BIP) requirements that are violated by these incidents. Based on how the allegation is presented, it is unclear whether and to what degree Parent believes this issue has denied Student a FAPE. The lack of such information renders the complaint insufficient to allow the District to meaningfully respond.

Parent further alleges that the District has repeatedly switched paraeducators working with Student. Complaint at 5. However, without any indication of which IEP (if any) is at issue or its requirements in the complaint, there is insufficient information to allow the District to prepare for a due process hearing for violating an IEP or denying a FAPE to Student.

Finally, counsel alleges that the District is proposing to place Student at a "prison-school." Complaint at 4. Aside from alleging that the proposed school is a "school to prison pipeline," there is no information included about why this school will or will not meet Student's educational needs. *Id.* Again, without specifics about Student's need accommodations, IEP requirements or specifics about why the proposed school is an inappropriate location for Student's FAPE, there is insufficient notice for the District to respond.

While the hearing request states that Parent wishes to address Student's IEP, placement and resources, there is essentially no indication of the "who, what, when, where, and why"

details needed for the District to respond to the complaint. There is no indication of what Student's placement is or should be; which (if any) IEP is in effect or needs modification; which supports (if any) are required by an IEP or needed by Student.

The complaint here failed to provide adequate notice of the nature of the problem 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 the 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 Parent 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 October 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 November 6, 2024. If Parent elects to file an amended due process complaint, all relevant timelines will begin anew as of the date of filing.

C. Meerdink

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

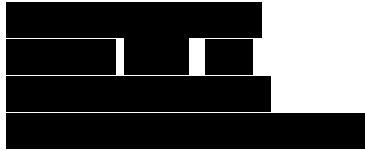
Unless otherwise stated in this order, the Office of Administrative Hearings (OAH) has no reason to believe that a party to this proceeding is subject to the Servicemembers' Civil Relief Act (SCRA). If a party to this proceeding is a servicemember who did not appear for the hearing, within

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 October 23, 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-06740 to the following parties.

By: Electronic and Certified Mail



Paul Janzen, Attorney at Law
Revealing Justice, LLC.
4550 SW Hall Blvd
Beaverton OR 97005
Email: paul@ruggedlaw.com

Caroline Janzen, Attorney at Law
Rugged Law Inc
4550 SW Hall Blvd
Beaverton OR 97005
Email: caroline@ruggedlaw.com

Joel Hungerford, Attorney at Law
The Hungerford Law Firm
PO Box 3010
Oregon City OR 97045
Email: joel@hungerfordlaw.com

Andrea Schiers, Attorney at Law
Portland Public Schools
501 N Dixon St
Portland OR 97227
Email: aschiers@pps.net
amoretz@pps.net

By: Certified Mail

Dr. Kimberlee Armstrong, Superintendent
Portland Public Schools
501 N. Dixon St.
Portland OR 97227

BY ELECTRONIC MAIL:

Mike Franklin, Legal Specialist
Department of Education
255 Capitol Street NE
Salem, OR 97310-0203

Lucy M Garcia
Hearing Coordinator
Office of Administrative Hearings