Oregon’s IDEA Disputes: The Year-In-Review
November 2013 Fall Conference

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Presentation Goals

• Review recent information regarding IDEA state complaints, Due Process hearings, and mediation from the Oregon Department of Education (ODE);

• Explore current issues in special education through the context of the ODE Dispute Resolution team; and

• Discuss potential pitfalls or areas of concern for administrators and highlight best practices learned from recent IDEA disputes.

Oregon Administrative Rules Applicable to Special Education and State IDEA Complaints

Chapter 581, Division 15: Special Education

- Free Appropriate Public Education
- Child Find
- Evaluations and Eligibility Determinations
- Parent Participation
- Individualized Education Program (IEP)
- Placements and Least Restrictive Environment
- Procedural Safeguards
- Discipline

http://oarsweb.sos.state.or.us/pages/rules/oars_500/oor_581/581_015.html
Legal Basis for ODE Dispute Resolution and IDEA

OAR 581-015-2030 Procedures for Complaints as Required by IDEA Regulations

581-015-2030 Procedures for Complaints as Required by IDEA Regulations

(1) An organization or individual, including an organization or individual from another state, may file with the State Superintendent of Public Instruction a written, signed complaint that the Department, or a sub grantee, including but not limited to a regional program, an education service district or a local education agency is violating or has violated the Individuals with Disabilities Education Act or regulations under that Act.

(2) The complainant must send a copy of the complaint to the public agency serving the child at the same time the complainant files the complaint with the Department.
(3) Upon receipt of a complaint under this provision, the Department will provide a copy of the Notice of Procedural Safeguards to a parent or adult student who files a complaint.

(4) If a complaint alleges violations outside the scope of the Individuals with Disabilities Education Act, the complainant will be informed of alternative procedures that are available to address the complainant’s allegations.

(5) The complaint must allege a violation that occurred not more than one year before the date that the complaint is received by the Department.

(6) The complaint must include the facts on which the complaint is based. If the facts as alleged by the complainant would be considered a violation of the Individuals with Disabilities Education Act:

   (a) The Superintendent will request the public agency to respond to the allegations. The Superintendent (or designee) may also initiate attempts to resolve the complaint through mediation or alternative dispute resolution, including local resolution.

   (b) The respondent must respond to the allegations and furnish any information or documents requested by the Superintendent within 10 business days from the receipt of the request for response from the Superintendent unless another time period is specified. The respondent must also send copies to the complainant at the same time.
581-015-2030 Procedures for Complaints as Required by IDEA Regulations

Regulations continued

14 (b) Pursuant to OAR 137-004-0080 and ORS 183.484(2), a party to the complaint may request reconsideration of the final order by the Superintendent within 60 days after the date of the order. Except as provided in this subsection, the Superintendent and a party seeking reconsideration shall follow the procedure for reconsideration described in OAR 137-004-0080.

(c) Notwithstanding OAR 137-004-0080, the Superintendent may not stay a final order upon request by a party and any party subject to Corrective Action resulting from the order must commence the Corrective Action according to the final order.

JUDICIAL REVIEW OF FINAL ORDERS

Main Issues Examined in Reconsideration:
- 7 Erroneous interpretation of a provision of the law
- Did the agency act within its discretion (as delegated by the law)
- Did the agency act consistently in interpreting the law
- Did the order violate a constitutional or statutory provision
- Is there substantial evidence in the record for a reasonable person to reach the same conclusion
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ORS 183.484(5)-(6)

5(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:
   (A) Set aside or modify the order; or
   (B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency’s exercise of discretion to be:
   (A) Outside the range of discretion delegated to the agency by law;
   (B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or
   (C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

ORS 183.484(9)(c)


If a reconsideration court finds the order under consideration is the agency decision, then the agency’s decision must be upheld if its conclusion was supported by substantial evidence relatively free from error. See Noble v. Water Resources, 329 Or App 414, 418 (2012).
Judicial Deference to Agency Interpretation of its own Rules

The court will “defer to an agency’s plausible interpretation of its own rule- including an interpretation made in the course of applying the rule- if that interpretation is not inconsistent with the wording of the rule, its context, or any other source of law.” Middleton v. Dept. of Human Services, 219 Or App 458, 466-67 (2008) (citing Papas v. OLCC, 213 Or App 369, 377, 161 P3d 948 (2007)).

ORS 183.484(4)(c)

Norden v. Water Resources, 329 Or 641, 646 (2000). If a reasonable person could make the same determination as the agency, then the agency’s decision must be upheld by the court even when the court could reach a different, and perhaps “more reasonable” conclusion.
IDEA Complaints Received by ODE July 1, 2012-June 30, 2013

Total number of complaints filed: 36

- Complaints with reports issued: 15
- Reports with findings of noncompliance: 21
- Reports within timeline: 6
- Reports within extended timeline: 13
- Complaints withdrawn or dismissed: 7
Complaints Received by Year

<table>
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<th>Year</th>
<th>Number of Complaints with Final Reports</th>
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<td>2011-2012</td>
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*July 1-June 30 of reporting year
Mediation in the Dispute Resolution Process

581-015-2030 Procedures for Complaints as Required by IDEA Regulations (continued)

(12) The Superintendent will issue a written decision that addresses each allegation in the complaint and contains findings of fact, conclusions, and reasons for the Department’s final decision unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and public agency agree in writing to extend the time to try mediation or local resolution.

Due Process Hearings

OAR 581-015-2345 Hearing Request and Response

(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) School District Requests for a Due Process Hearing:
   (A) A school district may request a due process hearing regarding identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education to the child.
ALJ Training

Training held March 14, 2013

Topics included:
- Pre-hearing conference (including working on a pre-hearing conference checklist)
- IDEA Due Process Hearings
- Making and writing a decision in accordance with appropriate standard legal practice
- Special Education Law update: Judicial and Administrative decisions

Due Process Results
July 1, 2013-June 30, 2013

15 Due Process Requests
4 Pending
11 Withdrawn or Dismissed
Braille Instruction and the IDEA

- IEP Implementation Lessons: Course materials should be provided in Braille in a timely manner as specified on a student’s IEP.

- Least Restrictive Environment lessons: Moving a student with a visual impairment from a general education class to a more restrictive one-to-one environment solely due to a lack of Braille translated materials, is a violation of the IDEA.

FAPE Lessons: Student’s failure to receive IEP components in a timely manner and without consistency along with a change of placement to a more restrictive environment, and the parent not receiving notice of these actions resulted in a denial of FAPE.

RecentOSEPGuidance on the Importance of Braille

- Dear Colleague Letter- June 19, 2013
- IDEA specifically addresses Braille instruction as needed for FAPE and to access the gen. ed curriculum.
- This also applies to students who need Braille instruction because they will have FUTURE vision loss.
- The IEP team should allow for sufficient instruction time in Braille based on the needs of the child.
- Bookshare- online, accessible, free library!
Independent Educational Evaluations (IEE)

- Parents who disagree with a district’s special education evaluation have a right to an IEE at public expense.
- IDEA authorizes districts to establish criteria for IEE including locations of the IEE and qualifications of examiner.
- Aside from these criteria, conditions may not be imposed on a parent to access an IEE at public expense.
- District may not limit the scope of evaluation in an IEE.

Communication between the District and Charter Schools, the ESD, and Private Schools

- Child Find obligations apply to children in public charter schools and home schooled children.
- Child Find obligations also apply to private schools located within your District.
- Share accommodation information, especially protocols for school-to-home communications.
Prior Written Notice (PWN)

581-015-2310 Prior Written Notice

(1) For purposes of this rule, school district also means ECSE program and its contractors and subcontractors.

(2) Prior written notice must be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school 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.

Prior Written Notice (PWN) continued

(3) The content of the prior written notice must include:
(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;
(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;
(d) A statement that the parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the Notice of Procedural Safeguards may be obtained;
(e) Sources for parents to contact to obtain assistance in understanding their procedural safeguards.
(f) A description of other options that the IEP Team considered and the reasons WHY those options were rejected; and
(g) A description of other factors that are relevant to the agency’s proposal or refusal.
"Program vs. Location"/
"Placement vs. Enrollment"

OAR 581-015-2250 Placement of the Child
• Requires that placement be determined by the IEP team.
• Placement must be based on the current IEP and in conformity with LRE.
• Parental preference may be one factor that is considered.

Transition Services under the IDEA and ORS 329.451

FAPE: specially designed instruction that is provided at no cost to the parents to meet the unique needs of a child with a disability.
• FAPE must be provided in conformity with a valid IEP.
• The IDEA does not include a minimum number of service hours, nor does the IDEA quantify service hours.
New OSEP Guidance

- Dispute Resolution Procedures Under Part B of the IDEA (July 23, 2013)
- Bullying of Students with Disabilities (August 20, 2013)
  - Bullying a student that results in no educational benefit is a denial of FAPE
  - Bullying may trigger Child Find obligations
  - Cyberbullying is included
  - IEP team should convene to determine if as a result of bullying needs have changed / what special ed or related services are needed to address these needs or what supports or services are needed

Interesting 9th Circuit Cases

- HELD: The panel rejected the district court’s grant of summary judgment on the ADA claims.
- IDEA provides a floor of access for students with CD BUT Title II of the ADA require EQUAL accessibility for students with CD
More from the 9th Circuit

Doug C. v. State of Hawaii Department of Education

- Due to parent’s scheduling conflicts, the first two attempts for an annual IEP meeting were canceled and rescheduled.
- On the third attempted IEP date parent canceled at 7:27 a.m. by phoning in because he was sick.
- District tried to reschedule before deadline but parent could not commit to any dates.
- District also tried to get parent to participate by internet or phone. Parent refused and wanted to be physically present.
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- HELD: Reversed the District Court’s judgment, the panel held the IDEA was violated by holding an IEP meeting without the participation of the parent.

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