



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUFFICIENCY CHALLENGE

OAL DKT. NO. EDS 03431-22

AGENCY DKT. NO. 2022-34186

E.K. ON BEHALF OF O.K.,

Petitioner,

v.

BAYONNE CITY BOARD OF EDUCATION,

Respondent.

David R. Giles, Esq., for petitioner

Robert J. Merryman, Esq., for respondent (Apruzzese, McDermott, Masto & Murphy, attorneys)

Record Closed: May 4, 2022

Decided: May 4, 2022

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

This decision addresses a sufficiency challenge under 20 U.S.C. § 1415(c)(2)(A), 34 C.F.R. § 300.508(d) (2019), and N.J.A.C. 6A:14-2.7(f).

FINDINGS OF FACT

Based on the documents submitted concerning this sufficiency challenge, I **FIND** the following as **FACT**:

On April 20, 2022, petitioner filed a request for due process hearing with the Department of Education, Office of Special Education (OSE).

On May 2, 2022, respondent filed a sufficiency challenge with OSE under 20 U.S.C. § 1415(c)(2)(A), 34 C.F.R. § 300.508(d) (2019), and N.J.A.C. 6A:14-2.7(f), to determine whether the request for due process hearing meets the requirements of 20 U.S.C. § 1415(b)(7)(A).

On May 2, 2022, OSE transmitted the sufficiency challenge to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a determination under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4.

In her request for due process hearing, petitioner writes that she is requesting the due process hearing because she believes that the Individualized Education Program (IEP) dated March 31, 2022, is inappropriate, and that respondent has violated her son's right to a "free appropriate public education" (FAPE) to which he is entitled under the law.

Accordingly, petitioner seeks an order declaring that respondent failed to provide her son with a FAPE, providing her son with an appropriate IEP, placing her son in an out-of-district placement, and awarding her son compensatory education.

CONCLUSIONS OF LAW

Under 20 U.S.C. § 1415(b)(7)(A), a due process complaint must provide notice of the following:

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

[20 U.S.C. § 1415(b)(7)(A)(ii).]

In this case, respondent argues that petitioner's request for due process hearing, or due process complaint, does not sufficiently allege a description of the nature of the problem, including facts relating to the problem.

Respondent is correct.

On its face, the document describes the nature of the problem, but it does not include any facts, let alone facts related to the problem. It merely identifies the problem and proposes a resolution. Therefore, I **CONCLUDE** that the notice contained in the request for due process hearing is insufficient under 20 U.S.C. § 1415(b)(7)(A), and that the case should be dismissed.

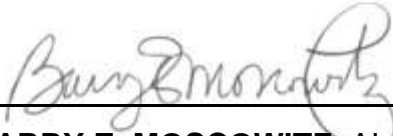
ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the request for due process hearing is **INSUFFICIENT**, and that the case is hereby **DISMISSED**.

This decision is final under 20 U.S.C. § 1415(i)(1)(A) and is appealable under 20 U.S.C. § 1415(g)(2) by filing a petition and bringing a civil action in the Law Division of the Superior Court of New Jersey or in a district court of the United States.

May 4, 2022

DATE



BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

May 4, 2022

Date Sent to Parties:

May 4, 2022

dr