



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUFFICIENCY CHALLENGE

OAL DKT. NO. EDS 03240-23

AGENCY DKT. NO. 2023-35699

A.R. AND N.R. ON BEHALF OF N.R.,

Petitioners,

v.

WEST ORANGE TOWN

BOARD OF EDUCATION,

Respondent.

A.R. and N.R., petitioners, pro se

Jared S. Schure, Esq., for respondent (Methfessel & Werbel, LLP, attorneys)

Record Closed: April 24, 2023

Decided: April 24, 2023

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

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 November 14, 2022, N.R. was declassified as a student in need of special education and related services. Petitioners, however, did not challenge the declassification. As a result, N.R. was no longer a child receiving special education and related services from respondent, effective fifteen days later, on November 29, 2022.

On March 8, 2023, petitioners filed a request for mediation with the Department of Education, Office of Special Education (OSE), seeking to maintain the current educational placement of N.R.

On April 10, 2023, petitioners converted the request for mediation into a request for due process hearing.

On April 19, 2023, 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), asserting that this due process complaint does not meet the requirements of 20 U.S.C. § 1415(b)(7)(A).

On that same date, OSE transmitted the case 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 OAL, N.J.S.A. 52:14F-1 to -23, for a hearing 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.

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).]

Meanwhile, in New Jersey, a due process complaint may only be filed concerning the following issues: the identification, the evaluation, the reevaluation, the classification, the educational placement, the provision of FAPE (a free, appropriate, public education), or the discipline of the child. N.J.A.C. 6A:14-2.7(a).

In this case, petitioners filed a due process complaint regarding none of those issues set forth in N.J.A.C. 6A:14-2.7(a) because N.R. is no longer a student in receipt of special education and related services, and the time period in which to challenge the declassification of N.R. to receive such special education and related services has long since passed. To challenge that declassification, petitioners would need to renew the process for eligibility. As such, the current due process complaint is not legally cognizable. Therefore, I **CONCLUDE** that the notice contained in the due process complaint is insufficient under 20 U.S.C. § 1415(b)(7)(A).

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the due process complaint in this case be **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.

April 24, 2023
DATE


BARRY E. MOSCOWITZ
Acting Director and Chief ALJ

Date Received at Agency: April 24, 2023

Date Sent to Parties:
dr April 24, 2023