



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUFFICIENCY CHALLENGE

OAL DKT. NO. EDS 03215-23

AGENCY DKT. NO. 2023-35700

C.Z. AND A.Z. ON BEHALF OF G.Z.,

Petitioners,

v.

DUNELLEN BORO BOARD OF EDUCATION,

Respondent.

C.Z. and **A.Z.**, petitioners, pro se

Robin S. Ballard, Esq., for respondent (Schenck, Price, Smith & King, LLP,
attorneys)

Record Closed: April 19, 2023

Decided: April 19, 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 April 5, 2023, petitioners filed a complaint, a request for due process hearing, with the Department of Education, Office of Special Education (OSE), contesting the requirements or parameters for home instruction.

On April 12, 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 April 18, 2023, 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). In fact, petitioners did not even identify their child as a child who receives special education and related services. Even so, petitioners fail to describe the nature of the problem and the facts relating to the problem as required under 20 U.S.C. § 1415(b)(7)(A)(ii). Instead, petitioners merely challenge the requirements or parameters for the receipt of home or out-of-school instruction due to a temporary or chronic health condition—with no reference to special education or related services. As a result, 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 19, 2023 _____

DATE

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BARRY E. MOSCOWITZ

Acting Director and Chief ALJ

Date Received at Agency:

April 19, 2023 _____

Date Sent to Parties:

April 19, 2023 _____

dr