



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

SUFFICIENCY OF COMPLAINT

OAL DKT. NO. EDS 01356-18

Agency No.: 2018 27396

K.H. and R.H. ON BEHALF OF T.H.,

Petitioners,

v.

**FRANKLIN BOROUGH BOARD OF
EDUCATION AND SUSSEX COUNTY
EDUCATIONAL SERVICES COMMISSION,**

Respondents.

K.H., petitioner, pro se

Frances Febres, Esq. on behalf of Franklin Borough Board of Education
(Cleary, Giacobbe, Alfieri, Jacobs, LLC)

Record Closed: January 25, 2018

Decided: January 25, 2018

BEFORE: **JOANN LASALA CANDIDO**, ALAJ:

On January 12, 2018 petitioners filed a due process petition on behalf of their minor child T.H. Shortly thereafter respondent filed a notice stating that the complaint is insufficient pursuant to N.J.A.C. 6A:14-2.7(a) & (c). The Office of

Special Education Programs (OSEP) transmitted this case to the Office of Administrative Law (OAL), where it was filed on January 24, 2018.

In this matter, respondent Franklin Borough maintains that the petition is insufficient because:

.....

“...Here, the petitioners are not contesting the District’s provision of a FAPE to T.H. Indeed, in their request for due process, the parents do not contest the actual education program or related services that are being provided to T.H. Rather, the sole purpose for the request for due process is for T.H. to remain with a particular teacher.”

Petitioner maintains that the nature of the problem is:

.....

“T’s prior placements were not successful and we don’t feel that the changes proposed by the school will result in success.”

The school left us with no other option as they are unwilling to mediate and discuss any alternative solutions to the proposed course of action.

We feel that T’s health, developmental progress, and academic progress will be negatively impacted by the proposed changes. The significant development and academic progress that T has made is because of Amber Werner’s work with him.”

Petitioner asserts that this problem could be resolved by the following:

“This problem could be resolved if the school could work with us to keep T in Amber Werner’s class. They are unwilling to make any modification to their proposed changes.”

In order to obtain a hearing on a due process complaint or to engage in a resolution session based upon a due process complaint, the petitioner’s due process complaint must provide information including the following: the name of the child; the address of the residence of the child, or, if homeless, available contact information for the child; the name of the school the child is attending; a

description of the nature of the problem of the child relating to the proposed or refused initiation or change; the facts relating to the problem; and a proposed resolution to the problem, i.e., relief sought, to the extent known and available to the party at the time. 20 U.S.C. § 1415 (b)(7)(A); 34 C.F.R. § 300.508(b), (c).

Having reviewed the filed complaint, I **FIND** and **CONCLUDE** that the request for due process made by petitioner is insufficient. Respondent is not changing T.H.'s services outlined in the IEP. They are exercising their discretion to change teachers.

Based upon the foregoing, I **CONCLUDE** that the Petition is insufficient to proceed and I therefore **ORDER** that the case be returned to the Office of Special Education Programs.

This decision is final pursuant to 20 U.S.C. § 1415(g)(2) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(g)(2); 34 C.F.R. § 300.516 (2007).

January 25, 2018



DATE

JOANN LASALA CANDIDO, ALAJ

ljb