



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

SUFFICIENCY OF PETITION

OAL DKT. NO. 9831-18

AGENCY DKT. NO. 2018 28232

D.M. and V.M. on behalf of Z.M.,

Petitioners,

v.

LITTLE EGG HARBOR TOWNSHIP

BOARD OF EDUCATION,

Respondent.

D.M. on and V.M. on behalf of Z.M., petitioners, pro se

John Comegno, III, for respondent (Comegno Law Group, P.C., attorneys)

Record Closed: July 12, 2018

Decided: July 16, 2018

BEFORE **EDWARD J. DELANOY, JR.,** ALAJ:

On June 11, 2018, petitioners filed a due process petition with the Department of Education, Office of Special Education Programs (OSEP). On June 27, 2018,

respondent filed a notice asserting that the petition is insufficient for the following reasons: Petitioners failed to include the specific issues in dispute or a description of the nature of the problem. Instead, both the due process petition and the May 10, 2018, mediation request assert several extremely vague and disjointed alleged facts, which fail to describe any specific issues in dispute. Further, petitioners' many allegations and statements of grievances are far outside the scope of a due process petition challenging FAPE. Petitioners essentially seek to use their petition as a way to complain about perceived insults and slights, rather than seek any cognizable judicial relief. Without a relevant description of the problem or issues in dispute, the Board is unable to file an informed response to the petition and the May 10, 2018, mediation request, other than making general denials, which is not permitted under N.J.A.C. 16A:14-2.7(e). N.J.A.C. 6A:14-2.7(f); 20 U.S.C. § 1415(c)(2)(A); 34 C.F.R. § 300.508(d)). The Office of Special Education Programs transmitted this case to the Office of Administrative Law, where it was filed on July 12, 2018.

In order to obtain a hearing on a due process petition or to engage in a resolution session based upon a due process petition, the petition 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) and (c).

Upon review of the petition and the request for mediation, there is a lengthy recitation by petitioners of the nature of the complaint and the facts relating to Z.M. Specifically, in the May 10, 2018, mediation request, petitioners allege a failure to provide FAPE, and they set forth the facts relating to the alleged issues in the IEP. More specifically, petitioners outline sixteen areas of concern and factual disagreements with the IEP that are of sufficient detail to allow for a proper response by the school board. As such, although imprecise, the pro se petitioners have presented a basic

platform sufficient to allow the school board, the school district, and a reviewing tribunal the ability to understand the dispute that petitioners are raising. Petitioners' allegations and statements of grievances are not outside the scope of a due process petition challenging FAPE. As such, I am satisfied that petitioners have sufficiently outlined the facts relating to the problem, and that they have set forth a proposed resolution to the problem

Specifically, the petition does include the following:

- the name of the child.
- the address of the residence of the child.
- the name of the school the child is attending.
- the available contact information for a homeless child.
- a description of the nature of the problem relating to the proposed or refused initiation or change.
- the facts relating to the problem.
- a proposed resolution to the problem to the extent known and available to the party at the time.

Therefore, having reviewed the petition for due process, I **CONCLUDE** that it includes the information required by statute and regulation and that it is sufficient.

In addition, the District alleges that petitioners' due process petition and mediation request violate the doctrines of collateral estoppel and issue preclusion. Respondent argues that petitioners use their due process petition and the May 10, 2018, mediation request to relitigate terms of a valid and enforceable settlement agreement reached on April 17, 2018, before Administrative Law Judge Crowley. There were ten terms in the April 17, 2018, settlement agreement. Those terms explicitly state what was to be included and considered going forward with the development and implementation of Z.M.'s IEP. Petitioners were informed that they were waiving rights to relitigate the issues discussed on April 17, 2018, to which they stated they understood

and agreed to be bound by the terms of the settlement agreement. Petitioners' petition violates the doctrine of collateral estoppel by seeking to relitigate already decided and settled issues.

While respondent District may be correct in its claims, the collateral estoppel claim set forth in this sufficiency challenge is not a proper factor to be considered in a sufficiency challenge. The petition in its present form is sufficient as required by law. Respondent may wish to raise its collateral estoppel arguments in a summary decision motion brought during the pendency of the due process challenge, should the challenge otherwise move forward, but these issues are not viable at this stage of the proceeding.

I **ORDER** that the case be returned to OSEP and that the parties proceed with the resolution session or mediation.

This decision is final pursuant to 20 U.S.C. § 1415(g)(2) and is appealable by filing a petition 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).



July 16 2018

DATE

EDWARD J. DELANOY, JR., ALAJ

Date Received at Agency:

Date Sent to Parties:

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