



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUFFICIENCY OF COMPLAINT

OAL DKT. NO. EDS 06750-18

AGENCY DKT. NO. 2018 27949

S.R. ON BEHALF OF J.R.,

Petitioner,

v.

EWING TOWNSHIP BOARD OF EDUCATION,

Respondent.

Record Closed: May 11, 2018

Decided: May 11, 2018

BEFORE **ELLEN S. BASS**, ALJ:

Petitioner, S.R., filed an expedited request for due process under N.J.A.C. 6A:14-2.7(o), on May 3, 2018. On May 9, 2018, the Ewing Township Board of Education (the Board) filed a notice asserting that the complaint is insufficient. 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 (OSEP) transmitted this case to the Office of Administrative Law (OAL) for a sufficiency ruling, where it was filed on May 10, 2018.

N.J.A.C. 6A:14-2.7(f) provides that “a request for a due process hearing, or expedited due process hearing (for disciplinary issues) serves as notice to the

respondent of the issues in the due process complaint.” Via its request for a sufficiency ruling, the Board urges that S.R.’s request fails to afford it adequate notice both regarding her complaints about her son’s educational program; and more specifically, regarding the facts that make this matter appropriate for disposition as an expedited hearing.

In order to obtain a hearing on a due process complaint, or to engage in a resolution session, the petitioner must provide the following information: 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).

In order to obtain an expedited due process hearing, “[t]he request for a due process hearing shall specify that an expedited hearing is requested due to disciplinary action.” N.J.A.C. 6A:14-2.7(o)(1). An expedited hearing is available when “the parent disagrees with the determination that the students’ behavior was not a manifestation of the student’s disability or with any decision regarding placement under 20 U.S.C. §1415(k) and its implementing regulations at 34 C.F.R. §§300.1 et. seq...” N.J.A.C. 6A:14-2.7(m).

I **FIND** that the petition was filed by the parent, pro se, utilizing a Department of Education form. She checked off “expedited due process **for disciplinary matters only**,” and also indicated that she is requesting mediation via OSEP in place of a resolution session. She provided her address; the name of the school her son is attending; and his classification. She gave a brief, but clear explanation of the problem her son is experiencing; that is, that his general education placement offers him insufficient supervision and support, and he is becoming involved in physical altercations as a result. She related several specific incidents. S.R. offers a proposed

resolution; an out-of-district placement “with proper...supervision.” Importantly, the petition does not challenge any specific disciplinary consequence imposed by the Board, notwithstanding the fact that S.R. checked the box for an expedited hearing. As a result, it appears that OSEP invited her to supplement her petition, and she did so via email dated May 8, 2018. S.R. wrote:

This is a supplement statement to the due process filing applications as per the conversation with OSEP staff on May 8, 2018. [J.] is a classified student with an IEP, he received disciplinary action of 10 days suspended out of his normal programming for the incident on April 19, 2018 and was also suspended earlier this fall for 1 day.

I **CONCLUDE** that S.R. has filed a sufficient due process petition. The Board’s argument that she needed to supply additional facts is without merit. At hearing, S.R. must demonstrate a nexus between her son’s behavioral issues and the alleged shortcomings in his special education programming. But, she is entitled to an opportunity to do so at a full plenary hearing. And her petition in its current form gives the Board adequate notice that she is dissatisfied with his current program, seeks a change, and generally explains what the parent believes would be more appropriate.

The Board also argues that the invitation to allow S.R. to supplement her petition was improper; and that in any event, the supplement does not offer sufficient facts to warrant processing this matter as an expedited due process petition. I agree that the petition is insufficient for processing as an expedited due process proceeding. The supplement S.R. filed indicates that her son was disciplined. It does not, however, discuss whether there was a manifestation review with which S.R. disagrees; indicate that J.R. is currently out-of-school; or state that he is not in the placement specified by his I.E.P. S.R. does point out that J.R. was suspended in total for eleven days this school year. While this is potentially violative of 20 U.S.C. §1415(k)(1)(B), I agree with the Board that the petition as currently drafted offers it no real understanding of why S.R. is aggrieved, nor does it aver any facts that would necessitate the fast-track scheduling that is required by an expedited request for due process.

As to the Board's contention that OSEP should not have assisted this petitioner in supplementing her petition, I disagree. S.R. has filed this petition, pro se. The intent of the IDEA is to make due process readily and easily accessible to parents, so that the statutory goal of making parents equal partners in their child's education can be realized. 20 U.S.C. §1400. OSEP was clearly acting in this spirit when it invited S.R. to supplement her petition. But her inability to fully flesh out her discipline related claims notwithstanding being given two opportunities to do so buttresses my view that a concern about placement and programming are at the heart of this matter, not discipline. The case should be processed as a regular due process petition. In that vein, I am pleased that the parent has requested mediation.

In summary, I **CONCLUDE** that the petition is insufficient for processing as an expedited due process proceeding. But, I further **CONCLUDE** that the petition is sufficient for processing as a regular due process petition. I therefore **ORDER** that the case be returned to the Office of Special Education Programs and that the parties proceed with the requested mediation.

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).

May 11, 2018



DATE

ELLEN S. BASS, ALJ

Date Received at Agency

May 11, 2018

Date Mailed to Parties:

sej