



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUFFICIENCY CHALLENGE

OAL DKT. NO. EDS 02153-20

AGENCY DKT. NO. 2020-31180

E.B. ON BEHALF OF F.B.,

Petitioner,

v.

UNION TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Record Closed: February 14, 2020

Decided: February 14, 2020

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

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 January 28, 2020, petitioner filed a request for mediation with the Department of Education, Office of Special Education Policy and Dispute Resolution (OSEPDR).

Before the mediation, the request was converted into a request for due process hearing.

On February 7, 2020, respondent filed a sufficiency challenge with OSEPDR 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).

On February 13, 2020, OSEPDR transmitted the sufficiency challenge to the Office of Administrative Law to determine whether this request for due process hearing meets the requirements of 20 U.S.C. § 1415(b)(7)(A).

In his petition, petitioner both references and attaches a letter, dated December 27, 2019, describing the nature of the problem, including the facts he alleges relate to the problem:

Please accept this letter as a request for changes relating to the proposed IEP for [F.B.] sent electronically on December 13, 2019, and received by mail on December 18, 2019. I have taken the full 15 days to review this proposed IEP. I am rejected the proposed IEP as is and I am requesting the following changes . . .

Petitioner then enumerates the changes he seeks, items one through eighteen, across three pages in his letter, as a resolution to the problem.

CONCLUSIONS OF LAW

Under 20 U.S.C. § 1415(b)(7)(A), a due process complaint must provide notice of the following:

- (l) 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).]

More pointedly, under N.J.A.C. 6A:14-2.7(c), a request for a due process hearing must state the specific issues in dispute, the relevant facts, and the relief sought:

A request for a due process hearing shall be made in writing to the State Director of the Office of Special Education Programs. The party initiating the due process hearing shall send a copy of the request to the other party. The written request shall note that a copy has been sent to the other party. The written request shall include the student's name, student's address, the student's date of birth, the name of the school the student is attending and shall state the specific issues in dispute, relevant facts and the relief sought and, in the case of a homeless child, available contact information for the child and the name of the school the child is attending.

[N.J.A.C. 6A:14-2.7(c).]

In this case, petitioner does state the specific issues in dispute, the relevant facts, and the relief sought. Again, petitioner has described the nature of the problem, including the facts related to the problem, and a proposed resolution of the problem. Plus, he does so in eighteen enumerated paragraphs.

Nevertheless, respondent challenges the sufficiency of the petition because it does not reference a settlement the parties had entered into and approved by an administrative law judge on November 27, 2019. Respondent also challenges the sufficiency of the

petition because the issues petitioner raises, according to respondent, are either clerical in nature or subject to the settlement agreement. Respondent also asserts that these issues are not in dispute because respondent did not have an opportunity to respond before petitioner filed his request for mediation.

In short, some issues are clerical in nature and some do relate to the settlement agreement, but some issues are not clerical in nature and might not relate to the settlement agreement.

Regardless, the settlement agreement required the parties to convene an IEP meeting the week of November 18, 2019, to modify the IEP from June 18, 2019, according to the terms of the settlement agreement. Thus, the new IEP from the week of November 18, 2019, is what is at issue. As a result, I **CONCLUDE** that the notice contained in the due process complaint is sufficient and that the timelines for resolution activities and for conducting a due process hearing should continue.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the request for due process hearing is **SUFFICIENT**, and that the timelines for resolution activities and for conducting a due process hearing shall continue.

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.

February 14, 2020
DATE


BARRY E. MOSCOWITZ, ALJ

Date Received at Agency: February 14, 2020

Date Sent to Parties:
dr _____