



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUFFICIENCY CHALLENGE

OAL DKT. NO. EDS 03238-20

AGENCY DKT. NO. 2020-31296

S.B. AND B.B. ON BEHALF OF S.B.,

Petitioners,

v.

WEST WINDSOR-PLAINSBORO REGIONAL

BOARD OF EDUCATION,

Respondent.

Record Closed: March 12, 2020

Decided: March 12, 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 February 7, 2020, petitioners filed a complaint with the Department of Education, Office of Special Education Policy and Dispute Resolution (OSEPDR); on February 19, 2020, petitioners filed a request for due process hearing with OSEPDR; and on February 21, 2020, petitioners filed a request for emergent relief with OSEPDR.

On February 21, 2020, OSPEPDR rejected the application for emergent relief.

On February 24, 2002, OSPEDR determined that the issue raised in the complaint, which concerns evaluations, was the subject of a settlement agreement, which the parties entered into on October 19, 2019, and the Office of Administrative Law (OAL) approved on October 26, 2019.

On March 5, 2020, respondent filed a sufficiency challenge to the request for due process hearing. Respondent filed the 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), and on March 5, 2020, OSEPDR transmitted the sufficiency challenge to the OAL to determine whether this request for due process hearing meets the requirements of 20 U.S.C. § 1415(b)(7)(A). In their request for due process hearing, petitioners request evaluations, referencing their complaint, and suggest a denial of a free and appropriate public education (FAPE), but the issue concerning the evaluations, as noted above, and the potential issue concerning the provision of FAPE, are covered by the settlement agreement.

In particular, the settlement agreement states that petitioners are responsible for all services and expenses related to their daughter's education from October 12, 2018, through October 12, 2021. In addition, the settlement agreement states that the school district will conduct evaluations and convene an IEP meeting on or before June 15, 2021, so an IEP can be developed for October 12, 2021, through October 12, 2022. Moreover, the settlement agreement states that the school district provided petitioners FAPE from the beginning of time through October 12, 2021.

Finally, the settlement provides that petitioners received a significant financial contribution from the school district in consideration of the agreement.

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).]

More pointedly, under N.J.A.C. 6A:14-2.7(a), a request for a due process hearing may be requested when there is a disagreement regarding identification, evaluations, reevaluation, classification, educational placement, the provision of FAPE, or disciplinary action:

A due process hearing is an administrative hearing conducted by an administrative law judge. For students age three through 21 years, a due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action. For students above the age of 21, a due process hearing may be requested while the student is receiving compensatory educational or related services.

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

In this case, the request for due process hearing does not concern a disagreement regarding identification, evaluations, reevaluation, classification, educational placement, the provision of a FAPE, or disciplinary action because the issues of evaluations and FAPE are expressly covered by the settlement agreement the parties entered into on October 19, 2019, and this tribunal approved on October 26, 2019. The settlement agreement is plain on its face needs no interpretation. Therefore, I **CONCLUDE** that no disagreement exists that is cognizable by law, and that the request for due process is **INSUFFICIENT** as a matter of law.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the request for request for due process hearing is hereby **DISMISSED** in its entirety.

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.

March 12, 2020
DATE


BARRY E. MOSCOWITZ, ALJ

Date Received at Agency: March 12, 2020

Date Sent to Parties: March 12, 2020

dr