



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUFFICIENCY CHALLENGE

OAL DKT. NO. EDS 05268-20

AGENCY DKT. NO. 2020-31681

K.K. ON BEHALF OF A.W.,

Petitioner,

v.

BLACK HORSE PIKE REGIONAL

BOARD OF EDUCATION,

Respondent.

Record Closed: June 12, 2020

Decided: June 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 June 3, 2020, petitioner K.K. filed a request for a due-process hearing, together with an application for emergent relief, with the Department of Education, Office of Special Education Policy and Dispute Resolution (OSEPDR), and on that date the OSEPDR transmitted the application for emergent relief to the Office of Administrative Law for a determination.

On June 8, 2020, respondent Black Horse Pike Regional Board of Education filed a sufficiency challenge with the 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 the 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 her request for due-process hearing, petitioner includes the name of her child, a description of the nature of the problem, and a proposed resolution of the problem, among other things, but petitioner also includes another request for due-process hearing for her other child. More specifically, petitioner also includes the name of her other child, a description of the nature of the problem for her other child, and a proposed resolution of the problem for her other child. In other words, petitioner filed two identical requests for her children instead of two differentiated requests for her children.

In addition, both of her children are over eighteen years of age, and petitioner failed to include evidence of legal guardianship or written authorization that she can file a request for due-process hearing for either of them.

Respondent challenges the sufficiency of the request for due-process hearing on these two bases.

CONCLUSIONS OF LAW

Under 20 U.S.C. § 1415(b)(7)(A)(ii), 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.

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 for a student, among other things, singularly and exclusively:

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.

In addition, under N.J.A.C. 6A:14-2.3, all rights transfer to the student upon attainment of his or her eighteenth birthday, unless the parent obtains legal guardianship, or the adult student authorizes a parent, in writing, to proceed on his or her behalf:

(m) Except when a parent has obtained legal guardianship, all rights under this chapter shall transfer to the student upon attainment of the 18th birthday. The district board of education shall provide the adult student and the parent with written notice that the rights under this chapter have transferred to the adult student. The adult student shall be

given a copy of the special education rules (N.J.A.C. 6A:14), the due process hearing rules (N.J.A.C. 1:6A) and the procedural safeguards statement published by the Department of Education.

....

4. When there is a disagreement regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, an adult student, the adult student may request mediation or a due process hearing or authorize, in writing, his or her parent to request mediation or a due process hearing and, while participating in such proceedings, to make educational decisions on his or her behalf.

As the excerpted provisions make clear, a request for a due-process hearing must be in the name of one student and one student only. In addition, when the student is an adult, the parent must provide evidence of legal guardianship or written authorization that he or she can file a request for due-process hearing on behalf of the adult student. Since petitioner has filed two identical requests instead of two differentiated requests, and since petitioner failed to include evidence of legal guardianship or written authorization that she can file this request for due-process hearing on behalf of A.W., I **CONCLUDE** that the notice contained in the due-process complaint is **INSUFFICIENT**, and that the request for due-process hearing should be **DISMISSED**.

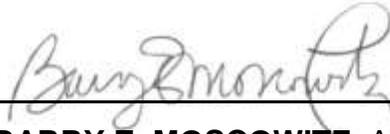
ORDER

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

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.

June 12, 2020

DATE



BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

June 12, 2020

Date Sent to Parties:

June 12, 2020

dr