



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

**SUFFICIENCY CHALLENGE**

OAL DKT. NO. EDS 09949-20

AGENCY DKT. NO. 2021-32197

**M.S. ON BEHALF OF M.S.,**

Petitioner,

v.

**ELMWOOD PARK**

**BOARD OF EDUCATION,**

Respondent.

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Record Closed: October 30, 2020

Decided: October 30, 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 October 13, 2020, petitioner filed a request for due process hearing with the Department of Education, Office of Special Education Policy and Dispute Resolution (SPDR), and in doing so, waived the resolution conference and requested that the case proceed directly to a due process hearing.

On October 21, 2020, SPDR transmitted the case to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4.

On October 29, 2020, respondent filed a sufficiency challenge with SPDR 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), to determine whether this request for due process hearing meets the requirements of 20 U.S.C. § 1415(b)(7)(A).

Subsequently that same day, respondent forwarded the challenge to the OAL.

In his petition, petitioner asserts that the virtual model the respondent is using for his child is “not working”, that his child cannot “keep up” with the teacher, that his Internet “drops regularly”, that his child “can’t hear the teachers”, that his child requires more “one on one” attention, that his child requires “a classroom setting full day”, that his child needs “adult supervision while completing his tasks to grasp the learning exercises”, and that his child needs “face to face instruction in person” so he can be corrected.

### **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).]

In this case, petitioner has described the nature of the problem, including the facts related to the problem, and a proposed resolution of the problem. To be sure, in describing the nature of the problem and the proposed resolution, petitioner is alleging, in essence, that his child is being denied a free, appropriate, public education. Whether petitioner will prevail at the hearing remains at issue; until then, the process should continue. Accordingly, I **CONCLUDE** that the notice contained in the due process complaint is sufficient and that the timelines for conducting a due process hearing should continue.

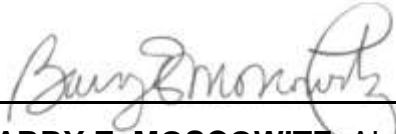
### **ORDER**

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 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.

October 30, 2020

DATE

  
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**BARRY E. MOSCOWITZ, ALJ**

Date Received at Agency:

October 30, 2020

Date Sent to Parties:

October 30, 2020

dr