



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUFFICIENCY CHALLENGE

OAL DKT. NO. EDS 02404-23

AGENCY DKT. NO. 2023-35544

**GREENWHICH TOWNSHIP BOARD
OF EDUCATION,**

Petitioner,

v.

B.S. ON BEHALF OF A.S.,

Respondent.

Paul C. Kalac, Esq., for petitioner (Weiner Law Group, attorneys)

Jamie Epstein, Esq., for respondent

Record Closed: March 24, 2023

Decided: March 24, 2023

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

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 March 3, 2023, petitioner filed a complaint, a request for due process hearing, with the Department of Education, Office of Special Education (OSE), denying respondents' request for seven independent evaluations. In its complaint, petitioner included the name of the child, the address of the residence of the child, and the name of the school the child is attending. Petitioner also included a description of the nature of the problem, including facts relating to the problem. Finally, petitioner included a proposed resolution to the problem.

On March 17, 2023, respondents filed a sufficiency challenge with OSE 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), asserting that this due process complaint does not meet the requirements of 20 U.S.C. § 1415(b)(7)(A).

On March 17, 2023, OSE 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 OAL, N.J.S.A. 52:14F-1 to -23.

On March 21, 2023, petitioner filed its opposition.

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 filed a due process complaint that included notice of those requirements. They are contained in petitioner's complaint and highlighted in petitioner's opposition, but respondents argue that the complaint is insufficient because they disagree with the basis of petitioner's denial of their request for independent evaluations. Respondents further argue that the complaint is insufficient because they also disagree with the form of petitioner's remedy. In so arguing, respondents attack the merits of the case, not the sufficiency of the complaint, which is sufficient as written. Accordingly, I **CONCLUDE** that the notice contained in the due process complaint is sufficient under 20 U.S.C. § 1415(b)(7)(A). I note that this decision does not preclude respondents from renewing their arguments about the merits of the case before the judge assigned to the case.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that the sufficiency challenge be **DENIED**, and that the timelines for conducting a due process hearing be **CONTINUED**.

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 24, 2023

DATE


BARRY E. MOSCOWITZ

Acting Director and Chief ALJ

Date Received at Agency:

March 24, 2023

Date Sent to Parties:

March 24, 2023

dr