



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

SUFFICIENCY OF COMPLAINT

OAL DKT. NO. EDS 1134-18

AGENCY DKT. NO. 2018 27382

J.F. and C.F. on behalf of J.F.,

Petitioners,

v.

EGG HARBOR TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Richard J. Kaplow, Esq., for petitioners (Law Office of Richard J. Kaplow,
attorney)

Amy Houck-Elco, Esq., for respondent (Cooper Levenson, attorneys)

Record Closed: February 15, 2018

Decided: March 1, 2018

BEFORE **EDWARD J. DELANOY, JR.**, ALAJ:

On or about January 9, 2018, petitioners J.F. and C.F. submitted a request for due process hearing to the Office of Special Education Program (OSEP). In its complaint, petitioner seeks:

A finding and adjudication that the respondent Egg Harbor Township School District ("District") has denied J.F. a free and appropriate public education (FAPE) during the 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 school years;

An order requiring the respondent to provide J.F. with FAPE consistent with the findings and/or recommendations of the most current and accurate evaluations;

An order providing J.F. with all necessary and appropriate interim relief, prior to a contested hearing in this matter, including, but not limited to intensive I:1 Language Arts and Reading Instruction with a certified reading specialist, and all recommended special education and related services, to be initiated forthwith; and

An order prohibiting the District from acting in any manner intended to dissuade or retaliate against petitioners for their exercise of their legal rights on behalf of themselves and their minor son, J.F.

On January 19, 2018, the District filed a notice asserting that the petition is insufficient for the following reasons:

The request for relief is improper pursuant to N.J.A.C. 6A:14-2.7(a)(1) which states in relevant part, that "[a] request for a due process hearing shall be filed within two years of the date the party knew or should have known about the alleged action that forms the basis for the due process

petition.” This two-year lookback period may only be extended for limited purposes and the petitioners do not identify such purposes in this filing;

The due process was erroneously filed with the State of New Jersey, Office of Administrative Law. Although the due process petition is dated December 28, 2017, the District did not receive a copy of the filing until January 11, 2018. The due process petition was not immediately served upon the District. The petition also fails to indicate that the filing was sent to the District’s office, i.e., proof of services. Therefore, petitioners have failed to effectuate proper service in accordance with the notice requirements of N.J.A.C. 6A:14-2.7(c);

The petition does not indicate proper information for the District to determine the identity of this student. Although the student is identified as J.F., no full name is provided nor are parents’ names provided. The petition omits other critical information including, but not limited to, the name of the school the child is attending. See 20 U.S.C. §1415(b)(7)(A)(ii)(I); and

The due process petition must also state specific issues in dispute, the relevant facts and the relief sought. See 20 U.S.C. §1415(b)(7)(A)(ii)(III); N.J.A.C. 6A:14-2.7(c). In particular, the District urges that although the petition references that petitioners are “greatly concerned with the objectively demonstrable fact that J.F.’s Language Arts and Reading Skills performance levels show an ongoing reduction in these skills over the past several school years,” the petition fails to outline those allegations with much specificity. The petitioners also seek an order requiring the District to provide FAPE that is “consistent with the findings and recommendations of the most current and accurate evaluations.” However, the petition fails to identify any recommendation and/or evaluations that serve as the basis for this relief request. There are no

factual allegations identifying: (1) the person or agencies that conducted the evaluations and/or education services referenced by petitioners; (2) the dates when such evaluations and/or educational services were conducted; or (3) the substance of such evaluations and/or services.

Accordingly, the District urges that petitioners have failed to set forth a sufficient petition for due process.

The Office of Special Education Programs transmitted this case to the Office of Administrative Law, where it was filed on January 22, 2018.

In order to obtain a hearing on a due process complaint or to engage in a resolution session based upon a due process complaint, the petitioner's due process complaint must provide information including the following: the name of the child; the address of the residence of the child, or, if homeless, available contact information for the child; the name of the school the child is attending; a description of the nature of the problem of the child relating to the proposed or refused initiation or change; the facts relating to the problem; and a proposed resolution to the problem, i.e., relief sought, to the extent known and available to the party at the time. 20 U.S.C. § 1415 (b)(7)(A); 34 C.F.R. § 300.508(b), (c).

Upon review of the original petition, I found that the name of the child was not provided, but the child's initials were provided. This is to protect the privacy of the child in pleadings before this tribunal. The District is free to ascertain the name of the child by contacting counsel for petitioners. I also found no error in addressing the child by the initials, and that the use of initials is sufficient as notice of the child's name. The address of the residence of the child was also provided, however, the name of the school the child is attending was not provided. In addition, there was a lengthy recitation by petitioners of the nature of the complaint and the facts relating to J.F. The facts relating to the issues were sufficiently specific, and questions regarding which recommendations and/or evaluations serve as the basis for the relief request can be

revealed in discovery. Therefore, the only deficiency in the petition was the failure to name the school the child is attending. As such, petitioners have presented a platform sufficient to allow the District and a reviewing tribunal the ability to understand the dispute that petitioners are raising. However, I required the name of the school the child was attending to be provided.

On January 30, 2018, petitioners filed an amended complaint, setting forth therein that J.F. is presently attending the Fernwood Avenue Middle School in the Egg Harbor District.

Therefore, having reviewed the filed amended complaint, I **FIND** that it does set forth all the information required. Specifically, the complaint does include the following:

the name of the child.

the address of the residence of the child.

the name of the school the child is attending.

N/A the available contact information for a homeless child.

a description of the nature of the problem relating to the proposed or refused initiation or change.

the facts relating to the problem.

a proposed resolution to the problem to the extent known and available to the party at the time.

While the District may be correct in its claims regarding the statute of limitations for school years in question, as well as issues regarding proper service of the petition, those claims as set forth in this sufficiency challenge are not factors to be considered in a sufficiency challenge. The petition in its present form is sufficient as required by law. The District may wish to raise its arguments regarding the statute of limitations for school years in question, as well as issues regarding proper service of the petition, in a summary decision motion brought during the pendency of the due process challenge, should that challenge otherwise move forward. However, the issue regarding the

statute of limitations for school years in question, as well as issues regarding proper service of the petition, are not viable at this stage of the proceeding.

In the prior Order of January 24, 2017, I allowed respondent fifteen days after filing of an amended complaint to file a notice concerning the sufficiency of the complaint. The amended complaint was filed on January 30, 2018, and no notice has been filed by respondent concerning the sufficiency of the amended complaint.

As a result, having reviewed the filed amended complaint, I find and conclude that it includes all of the required information and is therefore sufficient. Therefore, I **ORDER** that the case be returned to the Office of Special Education and that the parties proceed with the resolution session or mediation.

This decision is final pursuant to 20 U.S.C. § 1415(g)(2) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(g)(2)



March 1, 2018 _____

DATE

EDWARD J. DELANOY, JR., ALAJ

Date Received at Agency: _____

Date Mailed to Parties: _____

mph