

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

**DECISION**

OAL DKT. NO. EDS 11492-16

AGENCY DKT. NO. 2016-24777

**P.S. AND S.S. ON BEHALF OF A.S.,**

Petitioners,

v.

**SPRINGFIELD TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**Michelle L. Scanlon**, Esq., for petitioners (John Rue & Associates, attorneys)

**Janelle Edwards-Stewart**, Esq., for respondent (Porzio, Bromberg & Newman,  
P.C., attorneys)

Record Closed: August 23, 2017

Decided: August 28, 2017

BEFORE **JOAN BEDRIN MURRAY**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioners, P.S. and S.S., the parents of A.S., filed a due process petition on June 23, 2016, seeking to have A.S.'s student records amended. Specifically, petitioners seek to have A.S.'s failing grades in her junior year of high school, while she was a general education student, removed from her transcript or modified. A.S. first enrolled in the Springfield Public School District (the District) in October 2014, which was her junior year in high school. She had attended two other schools for her

freshman and sophomore years of high school. She was classified as a student with special needs in June 2015, after completing her junior year in the District. An Individualized Education Plan (IEP) was developed for her for the 2015-2016 school year. A.S. then satisfactorily completed her senior year of high school in the District, earning a weighted grade point average (GPA) of 3.82 for that year. She graduated from the District on June 22, 2016, with a weighted GPA of 3.30. The petition for due process was filed with the Office of Special Education Programs (the OSEP) one day later, reflecting petitioners' dissatisfaction with A.S.'s junior year grade report containing six grades of "F". Upon graduation, A.S. matriculated at Ramapo College of New Jersey.

Respondent filed the instant motion to dismiss, asserting that grade modifications are not within the purview of the OSEP. Thereafter, petitioners requested and were granted leave to file a motion to amend the petition. Opposing briefs and reply memoranda were filed with respect to the parties' motions. The hearing of this matter is scheduled for August 29, 2017.

### **MOTION TO AMEND THE DUE PROCESS PETITION**

As provided in N.J.A.C. 1:1-6.2(a), "pleadings may be freely amended, when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would create undue prejudice." In A.D. and S.F. on behalf of P.F. v. Mine Hill Twp. Bd. of Educ., OAL Dkt. No. EDS 07465-07 (July 19, 2007), ALJ Ken Springer denied a request to amend a pleading where the proposed amendment "amounts to a new and different complaint." In that matter, petitioner's amendment raised alleged violations of the IDEA that had occurred during a prior school year, and requested new relief. Here, an examination of the two petitions reveals that while the original petition seeks only grade modifications, the proposed amendment is an entirely new complaint. The two claims do not stem from the same set of circumstances. The proposed petition for due process contains more than one hundred fifty paragraphs of new allegations, asserting that the District failed to provide A.S. with a free and appropriate education (FAPE) from October 1, 2014 to June 22, 2016. It alleges violations of the Individuals with Disabilities Education

Act (IDEA), the Individuals with Disabilities Educations Improvement Act (IDEIA), the Rehabilitation Act of 1973 (Section 504), and other federal and state laws and regulations. The proposed petition seeks compensatory education to redress the District's alleged past failures to provide a FAPE to A.S., while maintaining a request for an Order requiring the District to modify A.S.'s general education grades.

Based on the foregoing, I **CONCLUDE** that petitioners' proposed pleading would not serve the interests of efficiency or expediency. I further **CONCLUDE** that the proposed petition constitutes an expansion of the original petition that requires the filing of a new complaint.

Accordingly, petitioners' Motion to Amend the due process petition in this matter is hereby **DENIED**.

### **MOTION TO DISMISS**

Respondent asserts that the petition for due process filed with the OSEP should be dismissed for lack of subject matter jurisdiction. I agree. The IDEA addresses the availability of hearings for special education matters as follows: "Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing . . . " 20 U.S.C.A. §1415(b)(2). Further, the subject matter of such complaints must pertain to "the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education . . . ." 20 U.S.C.A. §1415(b)(1)(E). These statutory provisions are mirrored by the U.S. Code of Federal Regulations 34 C.F.R. §§300.506(a) and 300.504(a)(1) and (2), along with the relevant New Jersey regulations found at N.J.A.C. 6A:14-2.7(a) stating that "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." In short, the list of enumerated matters falling under the due process umbrella is unequivocal.

Omitted from that list are challenges to the contents of student records. In R.S. v. Hillsborough Bd. of Educ. EDS 2168-00, Final Decision (April 18, 2000) <[http://njlaw.rutgers.edu/collections/oal/final/eds2168-00\\_1.html](http://njlaw.rutgers.edu/collections/oal/final/eds2168-00_1.html)>, in which R.S.'s parents alleged inaccuracies in his student records, the ALJ found that these kinds of disputes were "governed by general education rules." In sum, although R.S. was a student classified with special needs and the petition was transmitted by the OSEP as a special education case, the ALJ dismissed the petition for lack of jurisdiction, noting that "it is not the type of dispute that is within the authority of the Office of Administrative Law as set forth in the due process hearing requirement of the [IDEA]."

In the instant matter, A.S. received her junior year failing grades as a general education student. More significantly, the petition asserts no claim regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action. As such, the subject matter of the petition cannot be addressed in a special education due process forum.

Therefore, respondent's Motion to Dismiss petitioners' application for lack of subject matter jurisdiction is hereby **GRANTED**.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2016) 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.A. § 1415(i)(2); 34 C.F.R. § 300.516 (2016). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

August 28, 2017  
DATE

JOAN BEDRIN MURRAY, ALJ

Date Received at Agency

August 28, 2017

Date Mailed to Parties:  
dr

August 28, 2017