

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

SUFFICIENCY OF COMPLAINT

OAL DKT. NO. EDS 15437-14

AGENCY DKT. NO. 2014 21985

M.B. on behalf of S.B.,

Petitioners,

v.

LAKESWOOD TOWNSHIP BOARD

OF EDUCATION,

Respondent.

Michael I. Inzelbuch, Esq., for petitioners

Katherine Gilfillan, Esq., for respondent (Schenck, Price, Smith & King,
attorneys)

Record Closed: November 25, 2014

Decided: November 26, 2014

BEFORE LISA JAMES-BEAVERS, ALJ:

On November 14, 2014, petitioners filed a due process complaint with the Department of Education, Office of Special Education Programs. On November 20, 2014 respondent filed a notice asserting that the complaint is insufficient. 20 U.S.C. § 1415(c)(2)(A); 34 C.F.R. § 300.508(d). Respondent notes that a due process hearing may be requested only “when there is a disagreement regarding identification,

evaluation, reevaluation, classification, educational placement, the provision of a free appropriate public education, or disciplinary action. N.J.A.C. 6A:14-2.7(a). Respondent asserts that, although it provided petitioner with a finalized version of an IEP that differed from the draft IEP discussed at the IEP meeting, the actual educational program goals and objectives and the placement were not altered. Thus, respondent argues that the petition does not fall into one of the categories for which a hearing may be requested. The Office of Special Education Programs transmitted this case to the Office of Administrative Law, where it was filed on November 25, 2014.

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). In the present case, petitioner has provided the information set forth above. In addition to the contact information, petitioner has set forth that the problem is that the respondent changed language in the IEP to add wording, specifically contingency language, which she did not agree to and was not discussed at the IEP meeting. The proposed resolution to the problem is that respondent gives her the agreed-upon IEP that it took back, compensatory education and transportation from October 3, 2014 until the program and transportation began. Regarding whether the petition falls into one of the categories set forth in N.J.A.C. 6A:14-2.7, petitioner argues in addition to the IEP change, that some of the services in the IEP that she agreed to were not provided timely. Specifically, she sets forth that transportation did not begin when it was supposed to, and she is still owed tuition for S.B.'s out-of-district placement for 2013-2014 and up to October 3, 2014.

Having reviewed the filed complaint, I **FIND** and CONCLUDE that it includes all of the required information and is therefore sufficient. However, on page three of the petition, petitioner requests judicial approval of the program/placement recommended. This request for relief does not comport with the description and facts of the problem and relief requested set forth elsewhere in the petition. It also does not meet any of the categories for a petition set forth in N.J.A.C. 6A:14- 2.7. Therefore, I **ORDER** that the case be returned to the Office of Special Education, except for the request for relief seeking judicial approval of the program/placement recommended. I **ORDER** 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).

November 26, 2014
DATE

LISA JAMES-BEAVERS, ALJ

Date Received at Agency: _____

Date Sent to Parties: _____

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