



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

SUFFICIENCY OF PETITION

OAL DKT. NO. EDS 8348-19

AGENCY DKT. NO. 2019-30075

L.T. on behalf of A.T.,

Petitioner,

v.

TRENTON BOARD OF EDUCATION,

Respondent.

Robert A. Robinson, Esq., for petitioner (Disability Rights New Jersey)

Cherie L. Adams, Esq., for respondent (Adams, Gutierrez & Lattiboudere, LLC,
attorneys)

Record Closed: June 24, 2019

Decided: June 25, 2019

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

On June 10, 2019, petitioner filed a due process petition with the Department of Education, Office of Special Education Programs (OSEP). On June 19, 2019, respondent (or "District") filed a notice asserting that the petition is insufficient for the following reasons: On or about August 10, 2018, the petitioner requested that

respondent perform an initial evaluation, identified in the code as “referral” to determine A.T.’s eligibility for special education and related services. In compliance with N.J.A.C. 6A:14-3.3(e), the respondent held an identification meeting on September 28, 2018, to determine if evaluations were warranted. This regulation also provides that “the team may also determine that an evaluation is not warranted and, if so, determine other appropriate action.” In this case, the team determined that A.T. did not need to be evaluated. Moreover, the parent was provided written notice of the team’s determination. The team determined that A.T. was performing well and on grade level. The determination was based on the teacher’s report that there were no concerns regarding A.T.’s learning or academics. There were no behavioral concerns presented.

The District argues in this challenge that New Jersey regulations set forth language which states that “upon completion of initial evaluation or reevaluation, a parent may request an independent evaluation if there is a disagreement with the initial evaluation or reevaluation provided by the district board of education.” N.J.A.C. 6A:14-2.5(c). Under the circumstances presented, the District urges that it was not required to agree to the independent educational evaluation (IEE) request or file for due process upon the expiration of twenty days from the date of the alleged notice.

In sum, the District determined that no evaluations were warranted in this case of an initial referral. As such, there are no District evaluations which have been completed or which the petitioner can disagree with. The entitlement to seek an independent evaluation is predicated upon the completion of an initial evaluation or reevaluation and a parent’s disagreement with the District’s initial evaluation or reevaluation. That is not present in the petition herein. Respondent concludes that: this petition does not challenge the District’s determination that evaluations were not warranted. The petitioner simply sets forth a general allegation that the District violated the Individuals with Disability Education Act (IDEA) and requested independent evaluations.

Petitioner responds in a letter brief that prior decisions have held that a parent has the right to request an IEE at the school district’s expense without the district first

performing a formal initial evaluation or reevaluation. N.S. ex rel. W.S. v. Newark Sch. Dist., EDS 08229-14, Final Decision (November 19, 2014), <http://njlaw.rutgers.edu/collections/oal/>. Additionally, petitioner urges that this tribunal has held that a district's decision not to perform a formal initial evaluation is, in essence, the district's "assessment/evaluation" of the student, with which a parent can disagree and request an IEE. C.S. & L.B. ex rel. K.S. v. Ramsey Bd. of Educ., EDS 10160-11, Final Decision (February 24, 2012), <http://njlaw.rutgers.edu/collections/oal/>.

The Office of Special Education Programs transmitted this case to the Office of Administrative Law, where it was filed on July 20, 2019.

In order to obtain a hearing on a due process petition or to engage in a resolution session based upon a due process petition, the petition 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) and (c).

Upon review of the petition, there is a lengthy recitation by petitioner of the nature of the complaint and the facts relating to A.T. In the petition, petitioner alleges that she requested that respondent pay for the following on February 4, 2019: (1) independent psychological evaluation; (2) independent educational/learning evaluation; (3) independent psychiatric evaluation; (4) independent neurological evaluation; (5) independent social evaluation; and (6) independent FBA. However, respondent failed to file for due process within twenty calendar days of the receipt of the IEE request. Therefore, respondent must pay for the requested IEE of A.T. More specifically, petitioner outlines areas of concern and factual disagreements with the requested evaluations that are of sufficient detail to allow for a proper response by the District. Petitioner has also outlined the relief that she is requesting in the conclusion section of

the petition. As such, the petitioner has presented a basic platform sufficient to allow the school board, the District, and a reviewing tribunal the ability to understand the dispute that petitioner is raising. Petitioner's allegations and statements of grievances are not outside the scope of a due process petition challenging violations of the IDEA. As such, I am satisfied that petitioner has sufficiently outlined the facts relating to the problem, and that she has set forth a proposed resolution to the problem.

Specifically, the petition 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.
- 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.

Therefore, having reviewed the petition for due process, I **CONCLUDE** that it includes the information required by statute and regulation and that it is sufficient.

Notwithstanding the aforementioned, the District's allegation that it is not obligated to provide petitioner's independent evaluations at public expense once a child study team has determined evaluations are not warranted following a referral for evaluation, must be addressed. While respondent District may be correct in its claims, this issue, as outlined in great detail by the District in this sufficiency challenge, is not a proper factor to be considered in a sufficiency challenge. The petition in its present form is sufficient as required by law. Respondent may wish to raise its arguments that evaluations are not warranted in a summary decision motion brought during the

pendency of the due process challenge, should the challenge otherwise move forward, but these issues are not viable at this stage of the proceeding.

Therefore, I **CONCLUDE** that the due process petition includes the information required by statute and regulation and therefore is sufficient. I **ORDER** that the case be returned to OSEP 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 petition 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).



June 25, 2019

DATE

EDWARD J. DELANOY, JR., ALAJ

Date Received at Agency:

Date Sent to Parties:

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