



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

**FINAL DECISION**

**SUFFICIENCY CHALLENGE**

OAL DKT. NO. EDS 11274-20

AGENCY DKT. NO. 2021-32357

**D.F. ON BEHALF OF C.F.,**

Petitioner,

v.

**MOUNT OLIVE TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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Record Closed: December 21, 2020

Decided: December 21, 2020

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

**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 December 3, 2020, petitioner filed a request for due process hearing with the Department of Education, Office of Special Education Policy and Dispute Resolution (SPDR), and in doing so, waived the resolution conference and requested that the case proceed directly to a due process hearing.

On December 18, 2020, respondent filed a sufficiency challenge with SPDR 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), to determine whether this request for due process hearing meets the requirements of 20 U.S.C. § 1415(b)(7)(A).

On that same date, SPDR 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 Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4.

In her petition, petitioner asserts that issues exist concerning the implementation of the IEP, including some specific modifications contained in it, and that her daughter has not received the assistance she believes her daughter is entitled to receive under the IEP.

### **CONCLUSIONS OF LAW**

Under 20 U.S.C. § 1415(b)(7)(A), a due process complaint must provide notice of the following:

- (I) 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 has described the nature of the problem, including the facts related to the problem, and a proposed resolution of the problem. Although respondent argues that the problem described and the resolution proposed do not concern the disagreement for which a due process hearing may be requested, at this stage in the process, the problem described and the resolution proposed still sound as a denial of a free, appropriate, public education, for which a due process hearing may be requested. Whether petitioner will prevail at the hearing remains at issue; until then, these proceedings should continue. Accordingly, I **CONCLUDE** that the notice contained in the due process complaint is sufficient and that the timelines for conducting a due process hearing should continue.

### **ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that the request for due process hearing is **SUFFICIENT**, and that the timelines for conducting a due process hearing shall continue.

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.

December 21, 2020

DATE

  
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**BARRY E. MOSCOWITZ, ALJ**

Date Received at Agency:

December 21, 2020

Date Sent to Parties:

December 21, 2020

dr