



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

**FINAL DECISION**

**SUFFICIENCY CHALLENGE**

OAL DKT. NO. EDS 04438-21

AGENCY DKT. NO. 2021-32826

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

Petitioner,

v.

**NORTH WARREN REGIONAL BOARD**

**OF EDUCATION,**

Respondent.

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**D.F.**, petitioner, pro se

**John B. Comegno**, Esq., for respondent (Comegno Law Group, P.C., attorneys)

Record Closed: May 26, 2021

Decided: May 26, 2021

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 May 20, 2021, petitioner filed a request for due process hearing with the Department of Education, Office of Special Education Policy and Dispute Resolution (SPDR).

On May 21, 2021, 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 request for due process hearing, petitioner challenges the appropriateness of the individualized education program for her son. In particular, petitioner challenges the placement in “Level I (general education classes)” instead of “Level II (college preparatory classes).” Petitioner writes, “I am looking for the district to educate [J.F.] within the least restrictive environment (in-class support) while providing a Free and Appropriate Education (college prep/level II) that is in accordance with the Americans with Disabilities Act and the Individuals with Disabilities Education Act.”

## **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).]

Likewise, N.J.A.C. 6A:14-2.7(c) requires, among other things, “the specific issues in dispute, relevant facts, and the relief sought.”

Indeed, N.J.A.C. 6A:14-2.7(a) states, 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 this case, respondent argues that petitioner’s submission does not provide a “sufficient basis” from which it can understand the request for due process hearing and effectively defend itself against the allegations contained in the request. In addition, respondent argues that the relief sought does not concern special education but general education. Similarly, respondent argues that none of the relief sought falls within the relief that may be sought under N.J.A.C. 6A:14-2.7(a).

Petitioner’s request for due process hearing, however, does seek relief that may be sought under N.J.A.C. 6A:14-2.7(a). She has a disagreement regarding educational placement and the provision of a free, appropriate, public education. More specifically, petitioner has an issue with her son’s placement in “level I” or “general education” classes

instead of in “level II” or “college preparatory” classes. Ultimately, she wants her son placed in these level II or college preparatory classes with the appropriate supports. As such, petitioner has described the nature of the problem, including facts related to the problem, and a proposed resolution of the problem.

Accordingly, I **CONCLUDE** that the notice contained in the request for due process hearing is sufficient under 20 U.S.C. § 1415(b)(7)(A), and that the timelines for conducting a due process hearing should continue.

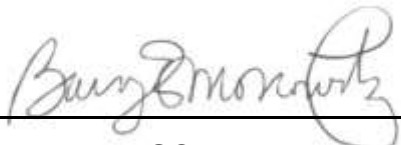
**ORDER**

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.

May 26, 2021

DATE

  
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**BARRY E. MOSCOWITZ, ALJ**

Date Received at Agency:

May 26, 2021

Date Sent to Parties:

May 26, 2021

dr