



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

SUFFICIENCY CHALLENGE

OAL DKT. NO. EDS 09125-21

AGENCY DKT. NO. 2022-33513

S.M. ON BEHALF OF E.M.,

Petitioner,

v.

VINELAND CITY BOARD OF EDUCATION,

Respondent.

Angela Kirwin, Parent Advocate, for petitioner under N.J.A.C. 1:1-5.4(a)(7)

Robert A. Muccilli, Esq., for respondent (Capehart & Scatchard, PA, attorneys)

Record Closed: November 9, 2021

Decided: November 9, 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 October 22, 2021, petitioner filed a request for due process hearing with the Department of Education, Office of Special Education Policy and Dispute Resolution (SPDR).

On November 1, 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 November 3, 2021, 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 writes that she is requesting the due process hearing because she disagrees with the denial of a fulltime aide for her child. She states that she disagrees with the data respondent collected during the probationary period because it does not correlate with the data she collected during her observation of her child in the classroom. She concludes that this issue could be resolved by reinstating the fulltime aide.

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.”

In this case, respondent argues that petitioner’s submission does not sufficiently allege relevant facts because petitioner does not identify the specific data or observations with which she disagrees.

I believe that petitioner has provided proper notice of “the specific issues in dispute, relevant facts, and the relief sought.” Any greater specificity can be learned through discovery. 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.

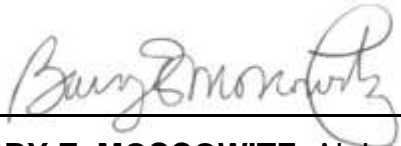
ORDER

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.

November 9, 2021

DATE



BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

November 9, 2021

Date Sent to Parties:

November 9, 2021

dr