



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

**FINAL DECISION**

OAL DKT. NO. EDS 01037-22

AGENCY DKT. NO. 2022-33845

**M.P. and R.P. on behalf of S.P.,**

Petitioners,

v.

**BERNARDS TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**M.P. and R.P. on behalf of S.P.,** petitioners, pro se

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

Record Closed: March 21, 2022

Decided: March 22, 2022

BEFORE **SARAH G. CROWLEY, ALJ:**

**STATEMENT OF CASE AND PROCEDURAL HISTORY**

On January 13, 2022, petitioners filed a due process complaint with the Department of Education, Office of Special Education Programs, alleging that S.P. is unable to be educated in school at this time as he is unable to communicate wearing a

mask due to stimulatory and sensory behaviors. They are seeking home instruction for S.P. On March 8, 2022, respondent filed a Motion to Dismiss asserting that the complaint is insufficient because it fails to raise a dispute regarding S.P.'s special education program and does not articulate facts relevant to the program. 20 U.S.C. § 1415(c)(2)(A); 34 C.F.R. § 300.508(d)); N.J.A.C. 6A:14-2.7(a).

The Office of Special Education Programs transmitted this case to the Office of Administrative Law, where it was filed on February 10, 2022. A Zoom conference call was held on March 15, 2022, to discuss the issues with the parties. The undersigned discussed the sole issue raised in the petition of the mask mandate with the petitioners, in light of the elimination of same in the District. The petitioners advised that due to medical issues involving S.P.'s father, they are still seeking home instruction. The petitioners were advised that this is not the issue raised in the petition and that there has been no medical or other documentation provided to the District or the undersigned to support this argument. Moreover, an issue relating to the condition of S.P.'s father does not relate to S.P.'s IEP or program and thus is not appropriately raised in a due process proceeding. The petitioners were advised to submit a response to the motion on or before March 21, 2022. A response was filed on March 21, 2022, and the record closed on that date.

### **LEGAL ARGUMENT AND CONCLUSION**

Pursuant to N.J.A. C. 6A:14-2.7(a), "a due process may be requested when there is a disagreement regarding identification, evaluation, re-evaluation, classification, educational placement, and the provision of a free appropriate public education or disciplinary action." The District argues that the petition should be dismissed because the issue relating to S.P.'s father's health is not related to any of the foregoing issues. Curiously, they now raise other issues not related to the issue of the mask or the father and seek to amend the petition. There is no support for any of the arguments being raised in the papers filed today. The sole issue in the petition related to S.P.'s placement in the school setting with a mask is moot. It is also important to note that the petitioners never sought an exemption from the mask mandate. However, there is no

longer any mask mandate and no other claims arising under 6A:14-2.7(a) have been asserted.

The argument which petitioners raised for the first time on the Zoom conference on March 15, 2022, related to S.P.'s father. The argument in their papers filed on March 21, 2022, seeks to amend the due process based on a completely new issue related to S.P.'s increased risk of COVID. There is no support provided for this claim. Moreover, such issues are related exclusively to non-special education matters, and as such, any such petition asserting this claim would fail to satisfy the criteria of N.J.A.C. 6A:14-2.7(a). A controversy or dispute arising under the school laws which does not meet the threshold requirements of N.J.A.C. 6A:14-2.7(a) cannot be asserted in a due process petition, as such disputes fall within the exclusive jurisdiction of the Commissioner of Education. See N.J.A.C. 6A:3-1.3(a); N.J.A.C. 6A:3-1.14(a).

I **CONCLUDE** that the relief sought in the petitioners' complaint is moot as the District has suspended the mask mandate in the schools. I further **CONCLUDE** that any claim related to S.P.'s father and/or S.P.'s health issues are not supported by any documentation and are not properly asserted in this due process proceeding and thus, the request to amend the petition to assert such claims is **DENIED**.

I therefore **ORDER** that the due process complaint be **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2021) 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(i)(2); 34 C.F.R. § 300.516 (2021). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

March 22, 2022 \_\_\_\_\_

DATE



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**SARAH G. CROWLEY, ALJ**

Date Received at Agency:

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Date Mailed to Parties:

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SCG/sm