

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

SUFFICIENCY OF COMPLAINT

OAL DKT. NO. EDS 642-15

AGENCY DKT. NO. 2015 22164

D.K. and M.K. on behalf of V.K.,

Petitioners,

v.

ATLANTIC CITY BOARD OF EDUCATION

AND MARGATE CITY BOARD OF EDUCATION,

Respondents.

Andrew Morgan, Parent Advocate, for petitioners, pursuant to N.J.A.C.1:1-5.4(a)7

Amy Houck, Esq., for respondent Atlantic City Board of Education (Cooper Levenson, attorneys)

Robert Muccilli, Esq., for respondent Margate City Board of Education (Capehart & Scatchard, attorneys)

Record Closed: January 14, 2015

Decided: January 20, 2015

BEFORE **LISA JAMES-BEAVERS**, ALJ:

On December 26, 2014, petitioners filed a due process complaint with the Department of Education, Office of Special Education Programs (OSEP). Petitioners also filed for emergent relief, but that request was not accepted by the OSEP. On January 12, 2014, respondent Margate Board of Education (Margate) filed a notice asserting that the complaint is insufficient for the following reasons: 1) petitioners do not set forth any factual allegations identifying the private evaluations, counseling services and tutoring sessions for which they are seeking compensation; and 2) petitioners do not set forth any factual allegations identifying the persons or agencies who conducted the private evaluations, counseling services or tutoring, or the dates when such private evaluations, counseling services or tutoring were conducted or the substance of same. 20 U.S.C. §1415(c)(2)(A); 34 C.F.R. §300.508(d)). OSEP transmitted this case to the Office of Administrative Law, where it was filed on January 14, 2015.

In order to obtain a hearing on a due process complaint or to engage in a resolution session based upon a due process complaint, the petitioner's due process complaint 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), (c).

The Third Circuit Court of Appeals upheld dismissal of a special education petition that failed to include specific facts in the description of the problem. M.S.-G. individually and by his parents and legal guardians, K.S.-G and J.S.-G v. Lenape Regional High School District Board of Education et al., 51 IDELR 236 (3rd Cir. 2009). Respondent Margate contends that petitioners have failed to provide it with notice of information pertaining to the private evaluations, counseling services or tutoring from 2010 to the present for which petitioners seek compensation or compensatory services.

Having reviewed the filed complaint, I **FIND** and **CONCLUDE** that it does set forth the information required. Specifically, the complaint does include: the name and address of the child; the address of the residence of the child; the name of the school the child is attending; a description of the nature of the problem relating to the proposed or refused initiation or change; the facts relating to the problem; and a proposed resolution to the problem. Regarding the M.S.-G. decision, Margate's notice of insufficiency pertains to only two of the requested items for relief and ignores the thirty-four preceding paragraphs of factual allegations pertaining to the actual problem that is the basis for the petitioners' request for due process. Those thirty-four paragraphs also reference the private evaluations that petitioners have obtained as well as the substance thereof. To the extent that information is missing regarding the requested relief, such information can be provided in discovery. There will be no obligation to compensate for it if it is not.

Having reviewed the filed complaint, I **FIND** and **CONCLUDE** that it includes all of the required information and is therefore sufficient. Therefore, I **ORDER** that the case be returned to the Office of Special Education and that the parties proceed with the resolution session or mediation.

In addition, it is actually Margate's answer that I find insufficient. Therein, Margate simply responds, "Denied" to paragraphs "2-34" stating that one or more of those paragraphs contain conclusions of law to which no response is required. There are clear statements of fact set forth in paragraphs "2-34," which require a factual answer. Certainly, all thirty-four paragraphs cannot be answered with the same denial. Since the issue is not presently before me; however, I make no order requiring an amended answer at this time, only a suggestion.

This decision is final pursuant to 20 U.S.C. § 1415(g)(2) 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(g)(2).

January 20, 2015 _____

DATE

LISA JAMES-BEAVERS, ALJ

Date Received at Agency:

Date Sent to Parties:

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