

**KENTUCKY DEPARTMENT OF EDUCATION
DIVISION OF LEARNING SERVICES
AGENCY CASE NO. 1920-13**

██████████

PETITIONER

v.

██

SCHOOL DISTRICT

RESPONDENT

ORDER DISMISSING

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This matter is before the undersigned on a request for a due process hearing filed on behalf of ██████████ pursuant to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1400, et. seq.) Petitioner filed its request with the Kentucky Department of Education (KDE) on November 26, 2019. KDE issued a “Notice of Due Process Hearing” on December 2, 2019.

By order dated December 5, 2019 and after considering Respondent’s Motion to Dismiss, the undersigned denied the Motion but ruled that the complaint was insufficient and allowed Petitioner the opportunity to amend its complaint on or before December 20, 2019, in accord with 34 CFR 300.508(d)(3). On December 13, 2019, counsel for Petitioner entered an appearance and requested an extension of time. During a telephonic pre-hearing conference conducted on December 19, 2019, Respondent indicated it had no objection to the extension and, by order issued that same date, Petitioner was given until January 15, 2020 to file its amended due process complaint.

Petitioner again requested an extension of time, noting that it had conferred with Respondent and there was no objection, and by order dated January 13, 2020 was given until February 14, 2020 to file an amended complaint. Petitioner filed an amended due process

complaint during the evening hours of February 14, 2020 and requested an additional extension of time up to and including February 21, 2020 to file another amended complaint.

By Order dated February 17, 2020, Petitioner's request was granted and he was given until February 21, 2020 to file an amended complaint meeting the requirements of 34 CFR 300.508(d)(1). Respondent has moved to dismiss the February 21, 2020 complaint as insufficient.

An IDEA due process complaint must relate to matters involving the identification, evaluation, or educational placement or provision of FAPE to a student. 34 CFR 507(a)(1). The federal regulations implementing IDEA impose specific requirements on due process complaints. The due process complaint is deemed sufficient unless the party receiving the due process complaint notifies the hearing officer within 15 days of receipt of the due process complaint that it does not meet the stated requirements. 34 CFR 300.508(d)(1). Respondent's motion was filed within 15 days of its receipt of the complaint. In accord with 34 CFR 300.508, the hearing officer must make a determination as to whether the complaint meets the regulatory requirements and must notify the parties in writing within five days of receipt of the objection. 34 CFR 300.508(d)(2).

Procedural safeguards and state complaint procedures, including hearing rights, are addressed in 707 KAR 1:340. Section 11(1) requires that a request for hearing contain:

- (a) The name of the child;
- (b) The address of the residence of the child;
- (c) The name of the school the child is attending;
- (d) A description of the nature of the problem; and
- (e) Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

Federal requirements essentially mirror the state requirements. Along with the identifying information set forth in 707 KAR 1:340, Section 11(1)(a)-(c), above, the federal regulation provides that a due process complaint contain "a description of the nature of the problem of the

child relating to the proposed or refused initiation or change, including facts relating to the problem,” and a proposed resolution of the problem to the extent known and available to the party at the time. 34 CFR 300.508(b).

The requirements as to the due process complaint prevent vague complaints and promote fairness by providing the parties with sufficient information to remedy the problem and/or prepare for the resolution session, mediation or hearing. The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” The complaint is not intended to reach the level of specificity and detail of a court pleading.¹

The undersigned finds that the complaint filed by Petitioner does not contain enough information to provide Respondent with an awareness and understanding of the issues forming the basis of the complaint. The complaint contains vague allegations and includes references to fraud, cheating, harassment, a tort action and the Americans with Disabilities Act. There is no description of a problem involving Student’s access to FAPE and the allegations presented are not appropriate for an IDEA due process hearing. Petitioner has had ample opportunity to remedy the insufficient complaint. It is **HEREBY ORDERED** that this matter is **DISMISSED**.

APPEAL RIGHTS

A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board as assigned by the Kentucky Department of Education. The appeal shall be perfected by sending the Department, by certified mail, a request for appeal within thirty (30) calendar days of the date of the Hearing Officer’s decision. 707 KAR 1:340 Section 12. The address is:

Kentucky Department of Education

¹ See, H.R. Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

Office of Legal Services
300 Sower Blvd.; 5th Floor
Frankfort, Kentucky 40601

So ordered this 6th day of March, 2020.

/s/Susan Gormley Tipton
SUSAN GORMLEY TIPTON
Hearing Officer
susantipton@roadrunner.com

CERTIFICATION

I hereby certify that a true copy of the foregoing Order has been served by mailing same to the following, via **e-mail**, on this the 6th day of March, 2020:

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/s/Susan Gormley Tipton
Susan Gormley Tipton
Hearing Officer