

STATE OF VERMONT
AGENCY OF EDUCATION

Special Education
Case DP # 24-05 (D.T.)

IDEA Due Process Hearing

RULING ON CHALLENGE TO SUFFICIENCY

On August 18, 2023 the Vermont Agency of Education received a Special Education Due Process Complaint, from the Parents of a Student in the Champlain Valley School District (District). The Parents wrote in their complaint, that: “Following a history of unresolved bullying at public school, it appears that my family and the school district decided that it would be in my son’s best interest to be enrolled elsewhere. It was believed that the process of selecting and paying for a suitable school was agreed upon by all parties and that the district would pay the tuition and fees. A school was selected, with the district informed of the progress of the choice process. When it finally came time to enroll my son and pay tuition, the district appeared to suddenly have a change and has not been forthcoming with funds or application assistance. We have witnesses, recordings of telephone calls and meetings, and emails to support that the district had done what a reasonable person would consider to be agreeing to help with the process and payment.” The Parents also wrote that their daughter was about to become old enough for school, and that they would like the same private school placement for their daughter.

During the initial scheduling conference, which was held on Zoom on August 29, 2023, the District raised objections about the sufficiency of the complaint under Vermont Special Education Rule 2365.1.6.5. The District’s attorney also stated that the District had previously sent an email message with the sufficiency challenge to the hearing officer, the state, and the parents on August 23, 2023. Neither the hearing officer nor the Parents recalled receiving the challenge on this prior date. As such, the District’s attorney emailed the sufficiency challenge and supporting materials along with the August 23rd email message to the state, the hearing officer, and the Parents. The Parents and the hearing officer confirmed receipt of the message and six attachments during the scheduling conference call. Regardless of when the initial challenge was emailed or received, the ultimate result is that the District properly contested the sufficiency of the filing within 15 days of receipt of the complaint, as required in VRSE 2365.1.6.5(b) and 34 C.F.R. § 300.508(d). The hearing officer is now responding, within five days of receipt, as required by VRSE 2365.1.6.5(b).

In the sufficiency challenge, the District properly points to state law and state courts for the resolution of general civil legal matters, such as contractual disputes. The District also appropriately notes that the Individuals with Disabilities Education Act (IDEA) has a very narrow range of potential claims for children with disabilities, using the due process hearing mechanism. The areas of IDEA due process potential disputes are limited to the identification,

evaluation, or placement (meaning a package of special education and related services) for a qualified student with a disability. The instant complaint at issue makes no mention of any of these legal or factual areas. There is no indication in the complaint that the Student (or his sister) needs the private placement due to a disability. There were also no facts presented that would indicate that the alleged bullying was related to the Student's disability in any way, or that it impacted his ability to receive a free appropriate public education (FAPE). While the IDEA is implicated for children with disabilities when they are bullied or harassed, regardless of if the harassment or bullying is based on the disability¹; the complaint did not allege any failures of the school or the IEP team related to the Student's FAPE as a result of the bullying and the mere use of the word "bullying" does not constitute an allegation of a violation of the requirements of the IDEA.

While the parents may have raised specific state law issues or contractual claims, there is no evidence on the face of the complaint as filed, that IDEA or Section 504 are implicated in this dispute. Additionally, both the Parents and District are amendable to mediation to work on their legal questions and school choice issues.

As special education due process hearings are legally limited to special education matters for children with disabilities, this hearing officer does not have jurisdiction over other state or federal law claims outside of special education matters. As such, all legal complaints outside of the IDEA and/or Section 504 may not be addressed via a special education due process hearing, and will not be addressed in this order.

As such, the District's motion to dismiss, based on a lack of sufficiency is granted.

Dated this 29th day of August, 2023.



Claudette Rushing

Contract Hearing Officer

Vermont Agency of Education

¹ See U.S. Dept. of Education, Dear Colleague Letter, (October 21, 2014).