

GEORGE K. BELCHER
5 MARVIN ST.
MONTPELIER, VERMONT
05602
(802) 223-3774
wvjmpr@aol.com

June 5, 2020

MEMORANDUM

To: John Carroll, Chair,
Vermont State Board of Education
(by email)

Re: Mill School Appeal/Options for Hearing Appeal

Dear Mr. Carroll:

You have asked that I describe for the Board some of the options for proceeding with this appeal.

Background

This appeal of The Mill School (an independent school for special and therapeutic education) was taken by Notice of Appeal dated 10/24/19. The issue is the student tuition rate to be approved for the school. Secretary Daniel French made an order by letter dated 10/14/19 which approved, in part, a decision of August 26, 2019 of a Rate Setting Committee. The school applied for a tuition rate of \$72,457.22 and the Secretary allowed a rate of \$44,995.00 with several adjustments which have yet to be finally allowed. The appeal was taken pursuant to State Board of Education Rule 2228.8(3) which requires a “formal proceeding” by the Board.

The Hearing

The “formal proceeding” rule is in SBE Rule 1230 *et seq.* I quote sections of that rule:

1232.3.1 An oral hearing shall be held in every formal proceeding except that hearing may be waived in the discretion of the hearing authority:

- (1) in a formal rule-making or declaratory ruling proceeding, if no request for a hearing is made at least five days prior to the hearing date in accordance with **3 VSA 803(a)** ; and the petitioner, if any, waives hearing; and
- (2) in any other formal proceeding if all the parties file written waivers of opportunity for hearing.

1232.3.2 Upon the filing of a petition initiating a formal proceeding, or upon the initiation of such a proceeding by the hearing authority on its own motion, the hearing authority shall order or otherwise assign a time and place for the hearing thereof and the hearing authority shall cause written notice of the hearing to be served upon each party.

* * *

1236.1 The state board, department, or commissioner may appoint a hearing officer who shall conduct pre-hearing conferences, conduct any hearings that may be required and prepare proposed findings of facts and conclusions of law for a decision by the hearing authority. A designated hearing officer shall have all other duties and powers of a hearing authority as provided in these rules.

1236.2 The state board, department, or commissioner shall review the proposed findings of fact and conclusions of law and render the decision. (emphasis added)

The Options

Under these sections, the Board can: [Option One] conduct a full hearing before the full Board; or, [Option Two] appoint a hearing officer to conduct the hearing and report to the Board. The Board would then review the proposed findings of facts, proposed conclusions of law, and proposed order of the hearing officer. The Board could then approve or reject the findings of fact. It could also approve the findings of fact but issue differing conclusions of law or impose an order different from the proposed order of the hearing officer. In short, the Board would review the hearing officer decision and take it from there. If the Board refused to adopt the proposed findings of fact of the hearing officer, it would, by implication, require a full hearing before the Board.

An alternative process [Option Three] is permitted under Vermont case law in the decision of In Re Lakatos, 182 Vt. 487 (2007). That decision sanctioned, and found some legal authority for, the appointment of a hearing committee of members of the Board to hear a contested case and make a report to the full Board. The Board could then adopt or reject the findings, conclusions and proposed decision (similar to the options available if a hearing officer conducted the hearing).

Thus, the question before you, and before the Board, is whether you desire to conduct this appeal by [1] a hearing before the whole Board, [2] a hearing before a hearing officer with ultimate review by the Board, or [3] the appointment of a hearing committee composed of select Board members.

At this point, I do not have a clear idea of the time which this hearing may require. It appears that the issues include technical issues; the appeal may include accounting issues as set forth in the Handbook for Financial Accounting of the Vermont School System as referenced in SBE Rule 2228.8.

This appeal is a quasi-judicial case before the Board. In discussing your options outlined here, and your decision regarding which option the Board selects, the Board may go into deliberative session under 1 VSA Sec. 312(e) to consider the question if the Board deems that to be necessary.

I understand that the Board might be considering this question at your meeting on June 17, 2020. I will be available to call in during the afternoon if needed. Please send me the agenda and a call-in number if you would like me to call in.

Please contact me if you have questions.

Very truly yours,

George K. Belcher