STATE OF VERMONT
AGENCY OF EDUCATION

Special Education IDEA Due Process Hearing
Case DP # 24-11 (L.Z.)

RULING ON CHALLENGE TO SUFFICIENCY

On February 16, 2024 the Vermont Agency of Education(AOE) received a Special Education Due Process Complaint, from the Parents of a Student (Student) who resides in the South Burlington School District (District). The Parents wrote 10 pages of concerns related to potential IDEA violations. Notable, in their complaint, the Parents alleged that:

1) The District failed to respond to critical communication regarding services;
2) The District failed to offer appropriate summer services;
3) The District failed to properly communicate with family about fall services, and the District changed IEP without notice/parental approval;
4) District failed to properly hire and utilize appropriate staff;
5) District failed to implement appropriate IEP services at the start of 1st grade;
6) District failed to offer appropriate program for individual needs;
7) District failed to incorporate the advice of professionals;
8) District attempted to force Parents to agree to an alternative placement without using proper notice;
9) District suggested alternative programs based entirely on diagnosis and not individual need;
10) District denied services based on-site;
11) District withheld services the Student is legally entitled to, reflecting his individual needs;
12) District failed to make good faith efforts to achieve the goals and objectives of the benchmarks listed in the IEP; and, that
13) District failed to provide a free appropriate public education (FAPE) for a two-year period from Kindergarten to the present date.

Prior to the initial scheduling conference, which was held on Zoom on February 26, 2024, the District raised objections about the sufficiency of the complaint under Vermont Special Education Rule 2365.1.6.58(b). The District emailed its Notification of Insufficiency of Due Process Complaint and Request for Limited Stay on February 23, 2024. As such, 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 special education rule, VSER 2365.1.6.5(a) and 20 U.S.C. § 1415(c)(2)(A) which require due process complaints to be in writing and include "a description of the nature of the problem relating to a proposed initiation or change of the child's identification, evaluation, and/or educational placement, and the facts relating to the problem." The District further successfully argued that sufficiency challenges present a pure question of law, to be resolved "on the face of the due process complaint." (H.T. v. Hopewell Valley Reg'l Bd. of Educ., No. 14-1308 FLW LHG, 2015 WL 4915652).

Next, the District noted that the due process complaint acknowledges that the Student is enrolled as a home study student at the time of this filing. The District also provided AOE records to corroborate this fact. The District argued that Vermont's special education rules limit the ability of home study parents to file state due process complaints for any matters outside of child-find claims related to evaluation or eligibility. *See* 2368.11.12 and 34 C.F.R. § 300.140. Notably, the controlling state rule holds that: "Independent school and home study children with disabilities have the right to file a complaint for due process under Rule 2365.1.6 only for the purpose of pursuing complaints that an LEA has failed to meet its responsibilities with regard to child find, including following procedures for evaluation and determination of eligibility. All other complaints may be pursued by way of the AOE's administrative complaint process." *See* VSER 2368.11.12. As such, the state of Vermont treats homeschooled students similar to parentally placed private school students for purposes of IDEA eligibility and services.

On February 26, 2024 the Parent responded to the District's Sufficiency Challenge. In their reply, the Parents held that the Student was enrolled in District schools at the time of the some of the alleged occurrences. They also contend that the District agreed that home-based instruction was the least restrictive environment (LRE) for the Student. However, the Parents did not provide any documentation to show that the District selected homebased instruction as the Student's required placement. Notably, a home-based placement is different from parentally placed home study/home schooled students for IDEA eligibility purposes under state and federal law. If the IEP team had determined that the Student needed to be educated alone in a home-based environment (as shown in an IEP or other documents), then the District would have different responsibilities under the law than if the Parents elect to withdraw the Student on their own, to pursue home based study options. In the response, the Parents also stated that they had enrolled the Student back into District schools that same day.

The District responded again on February 26, 2024 and again demanded that the case be dismissed due to a lack of sufficiency under the state and federal rules. The District highlighted the Parents admitted the child was enrolled in home study at the time of the filing of the complaint, and also stressed that the claims were not child find claims.

While the parents may have raised valid concerns about the District's ability to educate the Student, there is no evidence that the Student was eligible for a full free appropriate public education (FAPE) and all of the IDEA's protections, as a homeschool student, for the past two years. The parents' allegations were also not specifically child find claims. As such, the District is correct in its arguments related to sufficiency. However, the Parents will still have the right to

file appropriate state complaints or to file future due process hearings, as outlined in their procedural safeguard's rights, and as set forth in the IDEA. *See* 34 C.F.R. 300.508.

Finally, the Parents and District are amendable to mediation to work on their legal questions and school choice issues. As such, they may continue to work on resolution efforts, despite this ruling.

As noted above, special education due process hearings for parentally placed home study students are legally limited by state rule VSER 2368.1.12. As such, the complaint as filed may not be addressed in a due process hearing.

As such, the District's motion to dismiss, based on a lack of sufficiency is granted. The case is dismissed without prejudice.

Dated this 28th day of February, 2024.

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Claudette Rushing

Contract Hearing Officer

Vermont Agency of Education