

STATE OF VERMONT
AGENCY OF EDUCATION

IN RE: ADMINISTRATIVE COMPLAINT AC/D.P 20-05 (████)

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION

PROCEDURAL HISTORY

1. Parent filed this administrative complaint on March 5, 2020.
2. The Secretary accepted the complaint for investigation on March 6, 2020.
3. Parent filed a due process complaint on February 21, 2020 which was acknowledged received by the Agency of Education on February 24, 2020.
4. The administrative complaint was directly related to the due process complaint and was held in abeyance until completion of the due process complaint.
5. The Agency of Education (AOE) appointed Clare O'Shaughnessy to investigate this complaint.
6. Parent's complaint is filed against the Agency of Education as the State Education Agency (SEA).

FINDINGS OF FACT

1. Parent's allegations are exclusively addressed to the failure of the SEA to schedule an initial telephone conference within five (5) business days of receipt of the due process complaint.
2. Staff at AOE assigned a hearing officer within three (3) days of receiving parent's complaint but did not immediately inform the parent as attempts were made to secure available dates from the hearing officer and school officials for the initial telephone conference. This is the normal procedure followed by the AOE staff for scheduling, all of which takes place prior to sending out the official notification to the parties.
3. Staff at AOE sent the complaint to school officials and was informed the district would be represented by attorneys on February 25, 2020.
4. The scheduling of the initial telephone conference was delayed from February 25, 2020 through March 4, 2020 due to the following:
 - a. School vacation week (February 24-March 3);
 - b. State Offices were closed on March 3, 2020 (Town Meeting Day); and
 - c. Unavailability of the school's attorney on March 5 or 6 (dates originally proffered by the hearing officer as available);

5. Parent strenuously objected to the delays of scheduling the initial telephone conference and the attorneys for the school offered to file a motion with the hearing officer requesting a delay.
6. Once the schedules of the hearing officer and the school's attorney were aligned, the initial telephone conference was scheduled on March 12, 2020.
7. Parent insisted on a strict enforcement of the regulations requiring a telephone conference within five (5) days and did not accept any reason for the delay in scheduling.
8. Parent requested an apology, acknowledgement and remedy of the stress on the child caused by "waiting through an interim placement without consideration of the child's rights through this process", and reimbursement for damages.

SPECIFIC ISSUES TO BE RESOLVED THROUGH THE ADMINISTRATIVE COMPLAINT

1. Did the SEA violate SBE Rule 2365.1.6.7 (a)(1) and (2) by failing to inform the parties of the name of the hearing officer and time and date of an initial telephone conference call with the hearing officer within three (3) days of the filing of the due process complaint?
2. Did the SEA violate SBE Rule 2365.1.6.7 by failing to schedule the initial telephone conference within five (5) business days of the filing of the due process complaint?

LAW AND ANALYSIS

Any person or organization alleging that an LEA or public agency has violated a requirement of Part B of IDEA or implementing federal or state special education regulations, may file an administrative complaint with the Secretary of Education. In this case, parent filed an administrative complaint because the Agency of Education was unable to schedule an initial telephone conference within five (5) days of receipt of the complaint. In addition, the Agency delayed sending the initial notification letter until securing a date for the initial telephone conference which could be attended by school officials and the school's attorney. The parent insisted on strict adherence to the rule.

The AOE's procedure for scheduling these initial telephone conferences usually requires coordination behind the scenes to provide a date which will work for all parties. The AOE was unable to do that in this case. It is impractical to schedule a telephone conference solely to meet the requirements of the rule, when either the hearing officer or one of the parties is not available for that date and time. Since the purpose of the initial telephone conference is to establish and issue a due process scheduling order, it only make sense to have all of the parties on the phone conference at the same time. This is

why the AOE works to find an agreed-upon and available date and time, prior to sending out the official notice to the parties.

While the AOE was unable to schedule the initial telephone conference within five (5) days of the receipt of the complaint, the conference was held on March 12, 2020 and a due process scheduling order was established. Ultimately, the hearing officer dismissed parent's complaint after motion by the school district.

DECISION

1. The investigation concluded the SEA did not comply with SBE Rule 2365.1.6.7 regarding the notification to the parties of the name of the hearing officer and date and time for the initial telephone conference within three (3) days of the receipt of the due process complaint.
2. The investigation concluded the SEA did not comply with SBE Rule 2365.1.6.7 in scheduling the initial telephone conference call within five (5) business days from receipt of the complaint.

RECOMMENDED CORRECTIVE ACTIONS

The SEA acknowledges its responsibility to adhere to the requirements of SBE Rule 2365.2.6.7 regarding the initial notification to parties involved in a due process complaint. For future cases, the SEA can inform parties of name of the assigned hearing officer within three (3) days of receipt of the complaint. However, where it is apparent the Agency of Education is not able to resolve differences between the parties to schedule the initial telephone conference within the required five (5) day period from receipt of the complaint, the matter will be forwarded to the hearing officer, who will hear directly from the parties and render a scheduling decision. AOE staff involved in scheduling will be informed of the procedure to address scheduling conflicts which delay the official notification.

APPROVAL AND ADOPTION OF RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I, Daniel M. French, Secretary of Education of the Vermont Agency of Education, hereby approve and adopt the investigative team's recommended findings of fact, conclusions of law, and decision.

Dated this 22nd day of June at Manchester, Vermont.



Daniel M. French, Ed.D.
Secretary of Education