

**STATE OF VERMONT
VERMONT STATE BOARD OF EDUCATION**

RE: THE MILL SCHOOL RATE APPEAL

**PETITION FOR DECLARATORY RULING
BY
STATE BOARD OF EDUCATION**

This Petition is brought before the Vermont State Board of Education (SBE), specifically under 3 V.S.A. § 808, and generally under 3 V.S.A. Chapter 25 (the Vermont Administrative Procedure Act). Reference is also hereby made to State Board of Education Rules 1230-1232.

- 1 . The Mill School (TMS) is a therapeutic school whose rate setting appeal for fiscal years 2018-19, 2019-20 and 2020-21 was referred by the SBE to Hearing Officer George Belcher for the purpose of conducting the necessary fact-finding, and for the purpose of issuing a report and recommendation to the SBE regarding the matters in dispute;
- 2 After a multi-month delay, which was largely attributable to the Covid pandemic, the parties came to an agreement on August 12, 2020. This was shortly before the contested hearing was scheduled to take place. In the agreement, the parties reached a settlement that is reflected on Exhibit A of the attached background documents;
- 3 As part of the settlement, TMS agreed to waive collection of the underpayments for the 2018-2019 school year, but the parties agreed and understood that TMS would be collecting the underpayments for the 2019-2020 school year;
- 4 During the school year 2019-2020, TMS had received students from 11 districts. After those districts were notified of the newly-approved tuition rate, one or more of the districts sought confirmation that the AOE would be reimbursing them in accordance with the applicable special education formula for school year 2019-2020;
- 5 In order to confirm this fact, I reached out to AOE General Counsel Emily Simmons, who in turn directed me to AOE education finance specialist Brad James;
- 6 Seemingly, as a result of our inquiry, and at the request for direction by one or more districts, Mr. James issued the attached October 27, 2020 Memorandum indicating that there would be (and as a matter of SBE rule, *could* be) no additional reimbursements for school year 2019-2020 increased tuition rate;

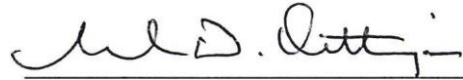
7. The October 27, 2020 Memorandum cites SBE Rule 2366.2.S(b), interpreting that rule to prohibit reimbursements after the conclusion of the academic year in question. We believe that this is clearly an inaccurate interpretation of the rule. Moreover, had the pandemic not shut down government offices for several months, the rate appeal would have been resolved prior to the conclusion of the school-year, and there would be no issue whatsoever regarding the availability of reimbursement following the contract expiration;
8. We are therefore asking, in accordance with 3 V.S.A. 808, that the SBE rule that the AOE's October 27, 2020 Memorandum is inaccurate, and that there is no basis within SBE rules (whether in 2366 or elsewhere) for the denial of any district-submitted request for reimbursement;
9. The fact that TMS was going to be seeking the additional tuition amounts for academic year 2019-2020 was part and parcel of the negotiations, and of the appeal resolution that was approved by the SBE;
10. It appears that AOE staff had conversations with one or more of the involved districts wherein AOE undermined the SSE-approved agreement. As a result of these conversations, and the AOE written guidance, all 11 originally-affected school districts were convinced to oppose TMS' efforts to collect the additional tuition, and TMS is now faced with having to invoke arbitration to resolve this issue;
11. To be clear, one of the 11 districts has reversed its position, and has paid TMS in full. It is unknown, as of this writing, whether the affected district has applied for reimbursement, and if so, what the AOE's position is. It is TMS' understanding from at least one person at the AOE that a waiver of the claimed "timeliness rule" is possible under appropriate circumstances;
12. If counsel for AOE was aware that the reimbursement requests by school districts would be denied, it had an obligation to disclose this fact, since we were clearly anticipating this issue when we entered into the settlement which the SBE approved;
13. Alternatively, if counsel for the AOE was unaware of the issue relating to reimbursement, its failure to raise the issue during the negotiations leading up the settlement should estop them from taking that position at this time; and
14. Stated differently, the AOE cannot take one position in settling the rate appeal and another position at a later stage of the process.

For the foregoing reasons, TMS respectfully requests that the SBE:

1. Allow TMS to come before the SBE as soon as possible to discuss the issue;
2. Construe Rule 2366 to permit reimbursement;

3. Instruct the AOE to rescind its October 27, 2020 Memorandum ;
4. Instruct the AOE to communicate this ruling directly to the 11 affected districts; and
5. Instruct the AOE to process any and all related reimbursement requests in the normal course .

DATED at Burlington, Vermont, this 1st day of April, 2021.



THE MILL SCHOOL
By: Mark D. Oettinger, Esq.
Montroll, Backus & Oettinger, P.C.
126 College Street, Suite 400
Burlington, Vermont 05401
(802) 540-0250
moettinger@mblawoffice.com

