

From: Sullivan, Allan [Allan.Sullivan@vermont.gov]
Sent: Wednesday, August 31, 2016 11:40 AM
To: Pepper, James; Johnson, Justin; London, Sarah
CC: Schatz, Ken; Cohen, Hal; Wisdom, Leslie
Subject: FW: Attorney Client Privileged Communication

Sarah and Pepper –

I understand Leslie and Ken spoke with you, Sarah, just a bit ago.

Secretary Cohen thought earlier -- before you spoke to Leslie -- that it would be appropriate and useful to get some weigh in by Pepper, Secretary Johnson and you. There are certainly considerations beyond the legal issues (not sure of your prior involvement) that may merit further discussion with Pepper and Secretary Johnson and so I thought I would (a) send my earlier "options" outline and (b) propose a conference involving Secretary Cohen (he is in DC negotiating our Medicaid waiver and unavailable between 2 pm and 4 pm, and I understand that Pepper and Secretary Johnson are away as well, so this might be a challenge).

Thanks for helping out.

Allan J. Sullivan

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From: Schatz, Ken
Sent: Wednesday, August 31, 2016 10:01 AM
To: Cohen, Hal <Hal.Cohen@vermont.gov>
Cc: Sullivan, Allan <Allan.Sullivan@vermont.gov>; Wisdom, Leslie <Leslie.Wisdom@vermont.gov>
Subject: Re: Attorney Client Privileged Communication

I agree that an emergency rule would help if it can address "supervision ' by clarifying that "under the direction of" means a child care provided who is not a school employee can provide such supervision, and that CDD clearance satisfies Section 255 for Act 166 providers. Discussing options on a conference call makes sense to me. Thanks.

Sent from my iPhone

On Aug 31, 2016, at 8:52 AM, Cohen, Hal <Hal.Cohen@vermont.gov> wrote:

If an emergency rule is possible, I think that's the best avenue.
Supervision of non cleared staff is really the most significant issue and I think we have the best case to support that that supervision doesn't have to be done by school employee. The issue regarding the sharing of fingerprint information is more problematic but time will eventually take care of it. That said, as Justin's memo stated, we can make a case for that too.

I suggest we get a conference call going. Include Pepper, Sarah London and Justin?

Sent from my iPhone

On Aug 31, 2016, at 9:45 AM, Sullivan, Allan <Allan.Sullivan@vermont.gov> wrote:

Leslie,

As discussed, I agree that the Addison County letter flies directly in the face of Secretary Johnson's memorandum stating that the CDD processes satisfy Section 155 and that supervision may be had through the pre-K program personnel. Insisting on hard copy fingerprinting via the Superintendents/Principals would, I understand, be duplicative of the CDD processes already underway, and would probably add another 4-6 weeks' time to get these programs on board; requiring school district personnel to directly supervise any Pre-K employees pending fingerprint checks is unworkable (that's not legally required). And the logical extension of the declaration that the contracts are not valid or effective until the fingerprinting is done seems to me to be that any time any program needs to backfill a position it must work shorthanded or cease operations.

I do not understand the Superintendents to have the authority to delay implementation of Act 166 this way. Options (short of doing nothing):

- We directly advise the Addison County Superintendents in writing that they are wrong. As we have discussed, they have already seen our position, disagree, and are charting their own course. I am not confident that a further writing will help. This may require some more other more direct, personal interventions, but even there, they have firmly laid out their position of what they believe their legal obligations are.
- We invite an administrative complaint under the Act 166 rules <http://education.vermont.gov/documents/edu-act166-prek-rules.pdf> and advise Addison County of our intention to suspend/expedite the 15 day period under Rule 2614(5) and hear the matter expeditiously.
- We engage in some form of emergency rulemaking that will allow the Addison County folks an out from their position. We will have to talk about what that looks like, but there is no reason why we can't enact a rule that deals with Section 255 in the Act 166 context. This option would (and the one immediately above) might require joint AOE/AHS action.
- We encourage VCIC to try to fast track the fingerprinting process and allow superintendents to use that direct fingerprinting route (again, I think the delays here would not be acceptable).

There are other options, but those have unacceptable optics (to include judicial intervention). Let's address with Secretary Cohen and Commissioner Schatz.

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