

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS  
BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Eleanor<sup>1</sup>

BSEA #1503787

**RULING ON PARENTS' EMERGENCY MOTION FOR NEUROPSYCHOLOGICAL  
EVALUATION**

This matter comes before the Hearing Officer on the Parents' Emergency Motion for Neuropsychological Evaluation, filed on January 14, 2015. The Pembroke Public Schools (hereinafter "the District") filed an Opposition to the Parents' Motion on January 15, 2015, and on that same day the Parents filed "Parent's (*sic*) Response to the District's Motion to Oppose the Parent's (*sic*) Emergency Motion for a Neuropsychological Evaluation." Neither party has requested a hearing on the Motion, and as testimony or oral argument would not advance the Hearing Officer's understanding of the issues involved, this Ruling is being issued without a hearing pursuant to *Bureau of Special Education Appeals Hearing Rule VII(D)*. For the reasons set forth below, the Parents' Emergency Motion for Neuropsychological Evaluation is DENIED.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

The factual background and procedural history is described in detail in a previous ruling concerning this same matter, "Ruling on Pembroke Public Schools' Motion for Substitute Consent to Issue Referral Packets," issued on January 20, 2015; it will not be repeated here. Once again much of the information contained in the Parents' initial 73-page submission, which included the Emergency Motion for Neuropsychological Evaluation (hereinafter "Emergency Motion") and documents in support of the Emergency Motion, and their subsequent submission, a response to the District's Opposition and supporting documents, is not directly relevant to the Parents' request that the Bureau of Special Education Appeals (BSEA) order the District to fund a neuropsychological examination of Eleanor. I consider only the "evidence relevant to the particular motion" now before me.<sup>2</sup>

**DISCUSSION**

In their Emergency Motion, the Parents argue that they are entitled to public funding of an evaluation by a neuropsychologist of their choosing because of deficits in connection with the psychological evaluations performed while Eleanor was undergoing an extended evaluation at

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<sup>1</sup> "Eleanor" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

<sup>2</sup> See *BSEA Hearing Rule VII(E)* ("In support of, or opposition to, a motion, a party may offer only evidence relevant to the particular motion.")

the Amego School. Specifically, they assert that “the District and the Amego School have delayed the evaluation procedures of 45 days, to approximately 90 days, have violated numerous state and federal regulations related to the evaluators being licensed and/or certified in a specific field of practice to even evaluate the student using Psychological testing instruments, and in their actions have completely and without question deemed the assessments invalid and destroyed the integrity of the assessments all to benefit the District and the Amego School, in an effort to continue to deny FAPE to the student by delaying the completion of the evaluations and subsequent determination as to the student’s appropriate placement to address her unique needs.”<sup>3</sup> The remedy they request for the violations they allege is that a neuropsychological evaluation be administered by an expert of their choice “at her going rate of approximately \$3000.00 and an additional consultation fee of \$350.00 and any charges that she may deem necessary.”<sup>4</sup>

The District offers three arguments in support of its opposition to the Parents’ Emergency Motion: first, the Emergency Motion contains multiple claims against non-parties (specifically, the Amego School and the individuals involved with the testing administered to Eleanor during her extended evaluation there); second, the Parents have not followed the regulatory process for requesting an independent educational evaluation; and third, the District has already been in contact with the Parents directly to address and rectify the deficits in the evaluations performed.

The Parents are asking, essentially, that the BSEA issue an order requiring the District to fund, at public expense, an evaluation that has been scheduled by Parents unilaterally with an expert of their choice. Because the evaluation requested would be performed by an outside provider, rather than through the District, the Parents have, in effect, requested an independent evaluation.<sup>5</sup> Both state and federal law address the subject of independent evaluations.

Under the Individuals with Disabilities Education Act (IDEA), parents have certain rights to obtain an independent educational evaluation at public expense. Federal regulations define “public expense” as meaning “that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301.”<sup>6</sup>

Although the BSEA has the authority in matters pending before it, pursuant to the Massachusetts special education regulations, “to order additional evaluations by the school district or independent education evaluations at public expense when necessary in order to determine the appropriate special education for the student,”<sup>7</sup> such an order would be premature in this case. The Parents are requesting from the BSEA, in the first instance, that which the regulations direct them to request of the District.

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<sup>3</sup> Parents (*sic*) Emergency Motion for a Neuropsychological Evaluation at p. 4.

<sup>4</sup> *Id.* at p. 5.

<sup>5</sup> See 603 CMR 28.08(5)(c) (defining independent educational evaluation as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question”).

<sup>6</sup> 34 CFR 300.502(3).

<sup>7</sup> 603 CMR 28.08(5)(c).

Both Massachusetts and federal special education regulations focus on independent educational evaluations as a tool for parents, subject to certain conditions, to obtain additional information about their children when they disagree with an evaluation obtained by a local educational agency.<sup>8</sup> In this instance, it is not clear that the parties have received a final psychological evaluation; the Parents' allegations suggest, in fact, that they received unfinished, unsigned, draft reports of psychological evaluations that contained information about students other than Eleanor and were administered by individuals who lacked the necessary certifications.<sup>9</sup> Even if Parents did receive, and disagree with, a finalized evaluation, the proper course of action would be to request an independent evaluation from the District, not directly from the BSEA. The District would then have to provide that evaluation at public expense, if the family qualified financially and it had previously evaluated Eleanor in the same area as the independent evaluation requested.<sup>10</sup> Alternately, "[i]f the parents request[ed] an independent education evaluation in an area not assessed by the school district, the student [did] not meet income eligibility standards, or the family [chose] not to provide financial documentation to the district establishing family income level," the District, if it denied the request, could file for a hearing at the BSEA.<sup>11</sup> If the BSEA were to "find[] that the school district's evaluation was comprehensive and appropriate, then the school district [would] not be obligated to pay for the independent education evaluation requested by the parent."<sup>12</sup>

The Parents have provided no compelling reason for the BSEA to take the extraordinary step of ordering the District to pay for an evaluation it has never been asked directly to fund. If the Parents wish to pursue an independent neuropsychological evaluation, they must follow the procedures set forth in Massachusetts and federal law, as described above.

## CONCLUSION

Upon consideration of the Parents' Emergency Motion for a Neuropsychological Evaluation, the District's Opposition thereto, and the Parents' Response to the District's Opposition as well as the relevant documents submitted by the parties, I decline the Parents' invitation to circumvent established procedures. Their Motion is hereby DENIED.

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<sup>8</sup> See 34 CFR 300.502(b) ("A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to [certain] conditions. . ."); 603 CMR 28.04(5) ("Upon receipt of evaluation results, if a parent disagrees with an initial evaluation or reevaluation completed by the school district, then the parent may request an independent education evaluation.")

<sup>9</sup> Parents (*sic*) Emergency Motion for a Neuropsychological Evaluation at pp. 2-4.

<sup>10</sup> 603 CMR 28.04(5)(d).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

**ORDER**

Parents' Emergency Motion for a Neuropsychological Evaluation is DENIED.

By the Hearing Officer:

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Amy M. Reichbach  
Dated: January 21, 2015