

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In Re: Hannah G.

&

BSEA #1507279

Old Rochester RSD

ORDER

This matter comes before the BSEA on the May 11, 2015 Motion of the Parent, pro se, for Recusal of the Hearing Officer. The School filed an Opposition to the Motion on May 14, 2015.

In order to prevail on a Motion for Recusal the requesting party must demonstrate at least one element indicating the likely incapacity or bias of the Hearing Officer. Alternatively, the Hearing Officer, after serious consideration of all the circumstances of the particular matter at issue, must conclude that there is significant potential for actual impropriety, or the likelihood of a reasonable public perception of impropriety, should the Hearing Officer continue an association with the matter.

In the matter before me the Parent has not alleged, nor is there any reasonable support for finding, a lack of professional qualification to act as an impartial hearing officer in this special education appeal. Furthermore, the Parent has not alleged, nor is there any factual support for, any objective factor that might warrant recusal. Examining my own emotions and conscience leads me to conclude that I have no previously acquired or extra-administrative knowledge of the matter, nor do I have impermissible prejudgments or bias that might render me incapable of treating the Parties fairly and a rendering decision solely on the evidence and applicable law.

Finally, I must determine whether my impartiality might reasonably be questioned by the participants or the general public. Here, the Parent's argument in support of disqualification rests on her dissatisfaction with her experience of the initial conference call held to clarify the scope of BSEA authority and the issues she sought to present at hearing. In particular, the Parent argued that the fact that she did not achieve the result she sought, an immediate order for school-provided assistance with SAT registration, indicated prior ex parte communication between the School's attorney and the Hearing Officer. There has been no ex parte communication between the Hearing Officer and the School's attorney concerning this, or any other, BSEA matter. The Parent's unsatisfactory experiences and/or perception do not in themselves indicate the existence of actual partiality or bias on the part of the Hearing Officer and do not, without more, provide sufficient support for recusal.

See: *Taunton Public Schools* 17 MSER 51 (2011); *Brockton Public Schools*, 16 MSER 367 (2010); *Duxbury Public Schools*, 14 MSER 363 (2008).

I do not doubt the Parent's unhappiness with the situation she finds herself in and her frustration with the special education appeals process. Neither, however, justify the Parent's unwarranted *ad hominem* aspersions about the actions and motives of the School and its representatives. These unsupported allegations serve only to weaken, and to divert attention and resources from, what might be legitimate requests for assistance for the Student.

Based on the foregoing discussion the Parent's Motion for Recusal is DENIED.

All further due process events, including any conference calls or prehearing conferences, will be recorded. A copy of the tape recording will be provided to the parties to aid recollection of events.

By Order of May 8, 2015 the Parent's Motion for Leave to File an Amended Complaint was GRANTED. The Amended Complaint is due on June 5, 2015. If an Amended Complaint is timely received by the School and the BSEA, new timelines will be set out on the Notice of Hearing and the previously scheduled Hearing dates will be cancelled. If no Amended Complaint is received the case will proceed on the Hearing dates previously reserved, June 23 & 24, 2015 and will address the issues set out in the BSEA order of April 30, 2015.

By the Hearing Officer

Lindsay Byrne
Dated: May 22, 2015