

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

In Re: Shrewsbury Public Schools

&

BSEA #1508106C

Yandel¹

RULING ON PARENTS' MOTION FOR COMPLIANCE

This matter comes before the Bureau of Special Education Appeals on the Parents' Motion for Compliance with the Decision issued in this matter on November 24, 2015. A Hearing was held on the Parents' Motion on April 26, 2016 at Catuogno Reporting Services in Worcester, MA. The facts are not in dispute and may be briefly summarized.

FACTUAL BACKGROUND

1) Shrewsbury requested a BSEA Hearing on June 14, 2015 to challenge the Parents' Request for a publicly funded Independent Educational Evaluation ("IEE"). The Parents had arranged for a comprehensive evaluation of Yandel at the Learning Disorders Clinic of Boston Children's Hospital. They had requested that Shrewsbury fund the evaluation by contracting directly with Children's Hospital. They supplied Shrewsbury with a sheet outlining the state contracted rates for each component of the proposed IEE. Shrewsbury declined to arrange or fund the Children's Hospital evaluation asserting that its own evaluations were comprehensive and appropriate.

2) The Parents went ahead with the Children's Hospital evaluation and paid all the amounts requested by Children's Hospital in order to secure the evaluation and the resulting reports.

3) The Parties agreed to submit the matter for Decision on Documents pursuant to BSEA Rule XII. On November 24, 2015 the BSEA determined that the Parents were entitled to a publicly funded IEE. The Order states:

¹ "Yandel" is a pseudonym selected by the Hearing Officer to protect the privacy of the Student in documents available to the public.

Shrewsbury Public Schools shall reimburse the Parents for *all out-of-pocket costs* they have previously paid to Children’s Hospital Learning Disorders Clinic in connection with Yandel’s evaluation there in July 2015, with the exception of any costs directly related to the medical examination by the Neurologist.

In Re: *Shrewsbury Public Schools*, 21 MSER 247 (2015). (emphasis added)

4) Shortly after the Decision was issued the School sent a check to Children’s Hospital in the amount of \$1,493.22. This sum represented the total permissible charge for the authorized components of the IEE at the state contracted rate. The check was returned to the School by Children’s Hospital as the bill for the evaluation had been paid in full by the Parents. There was no outstanding balance.

5) On December 22, 2015 the School issued a check to the Parents in the amount of \$1,494.22.

6) The Parents objected to the amount of the reimbursement check. They told Shrewsbury that it did not reflect the amount they actually paid to Children’s Hospital for Yandel’s evaluation. They presented an email from Children’s Hospital detailing the charges to the Parents for each component of the evaluation after the contribution of the Parents’ health insurance plan. Children’s Hospital confirmed that the Parents had paid the full amount charged to them: \$2133.46.

7) The difference between the Parents’ out-of-pocket payment to Children’s Hospital for the qualifying components of the IEE and Shrewsbury’s reimbursement to them is: \$690.24.

8) On February 2, 2016 the Parents requested a Finding of Non-Compliance due to Shrewsbury’s failure to fully reimburse the Parents’ out-of-pocket expenses as required by the BSEA Decision of November 24, 2015.

FINDINGS AND CONCLUSIONS

This appears to be, simply, a matter of misunderstanding and a “failure to communicate.” When the Parents originally requested a publicly funded IEE in February 2015, they included a sheet detailing the Commonwealth’s approved charges as a courtesy to the School. The School, however, did not arrange for the IEE and therefore, was never in a position to benefit from the lower evaluation costs negotiated by the Commonwealth. Instead, and as a direct result of its refusal to arrange for the requested IEE, the School was obliged to cover the cost of the IEE at the substantially higher rate evaluation facilities routinely charge to Parents for the same service.

At the Hearing the School argued that it was not required to reimburse the Parents their full out-of-pocket costs because the only rates it was aware of were set out in the “rate setting” sheet submitted by the Parents along with their February 2015 request for a publicly funded IEE. That argument is rejected. First, it is a school responsibility, not a parent one, to diligently

investigate and to evaluate the various potential costs of a decision to accept or reject a parental request for a special education service. Parents should not bear the cost of a school's failure to do so. Second, the BSEA Decision clearly states that the Parents are to be fully reimbursed for all expenses associated with securing the IEE to which Yandel was entitled. A *free* appropriate public education includes an Independent Educational Evaluation when merited. Unless the Parents are fully reimbursed, the IEE to which Yandel was entitled is not *free*. 34 C.F.R. 300.502(a)(3)(ii). A brief communication between the School and the Parents subsequent to the Decision could easily have yielded the information necessary for proper reimbursement of the Parents' IEE expenses consistent with the requirements of the IDEA and the BSEA Decision.

Shrewsbury also argued that it was not responsible for certain components of the Children's Hospital evaluation as they were redundant. For example, Shrewsbury stated that Psychological and Neuropsychological evaluations use the same tests and produce the same information and thus should not merit two different charges. I do not accept this argument. First, it is untimely. Any objections to the type, sufficiency or redundancy of the evaluations conducted by Children's Hospital, or to the charges for them, should have been raised during the original Hearing. They were not. Second, the School's argument is not consistent with the documents submitted in the original Hearing in which the unique properties and characteristics of the Psychological and Neuropsychological evaluations are demonstrated.

Similarly, the School argued that there was little difference between the Neuropsychological Evaluation for which it was found responsible and the Neurological Evaluation which was excluded from the reimbursement Order. It sought to be relieved of responsibility for the charge for the Neuropsychological evaluation on that basis. Again, the School's argument is both untimely and not founded in the evidence. The reports of the challenged evaluations reveal significant differences in evaluator credentials, evaluation methods and instruments, and the focus and perspective of the resulting recommendations.

ORDER

Having produced no evidence, nor any persuasive argument, that might excuse performance of the duty imposed upon it by the IDEA and the controlling BSEA Decision, Shrewsbury shall immediately pay the Parents the sum of \$690.24. That figure represents the difference between what Shrewsbury had previously paid the Parents under the mistaken impression that payments of parental reimbursement claims were restricted to the state-approved rate for IEEs, and the actual amount of the Parents' out-of-pocket payments to Children's Hospital for the IEE to which Yandel was entitled.

By the Hearing Officer

Lindsay Byrne
Dated: May 9, 2016