

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

In Re: Student v.
Taunton Public Schools &
Department of Children and Families &
May Institute

BSEA # 1601127

Ruling on Parent's Motion for Recusal of the Hearing Officer

On August 4, 2015, Parent in the above-referenced matter filed a Hearing Request with the BSEA against Taunton Public Schools (Taunton), the Department of Children and Families (DCF) & the May Institute (May). Thereafter on August 6, 2015, Parent filed a Request for the Hearing Officer to recuse herself.¹ Parent argued that the same Hearing Officer had entered a prejudicial Decision against him in a previous case.

On August 14, 2015, Taunton filed a Motion for Dismissal of the Hearing and also challenged the Sufficiency of Parent's Hearing Request². DCF notified the BSEA on August 17, 2015 that it had not been served. Nothing was received from May.

Also on August 14, 2015, Parent wrote the BSEA seeking a default judgment against Taunton and award of the resolution proposed by Parent in his Hearing Request. Parent further explained that on August 4, 2015, he had rejected the proposed IEP and placement due to safety concerns. According to Parent, Student, who is non-verbal, had been physically abused at May³ and no report of the alleged incident had been filed. Parent sought to have Student placed in Taunton where he resides.

¹ Whether Parent forwarded a copy of his Motion to Recuse (or his two other submissions) to Taunton, DCF and May is uncertain. However, upon receiving DCF's request to enlarge the time to submit a response to Parent's Hearing Request on the basis that it had not been served, a copy of all Parent submissions were faxed to DCF and May on August 18, 2015.

² Under the Hearing Request Description of the issue(s) section, Parent states:

The Taunton Public Schools District has the disabled child ED being neglected with a inappropriate IEP not approved by this parent who at no time lost any rights to make ED decisions for my disabled child. The Taunton public school system, department of children and family, May schools have interfered and obstructed this agencies functions to violate the child IEP on 3 occasions.

Parent's proposed resolution of the problem sought funding for the student's education and a signed agreement from all parties that they would follow the pertinent laws and regulations regarding special education.

³ Parent alleges that (Student had arrived home with black and blue bruises that covered his lower body).

On August 17, 2015, DCF filed a Motion to Enlarge the Time for Filing a Response to the Hearing Request on the basis that Parent had not forwarded a copy of the Hearing Request (or other submissions) to DCF.

On August 18, 2015, Parent renewed his request for recusal of the Hearing Officer stating that the Hearing Officer “had refused to excuse herself due to the fact that she had made prior inappropriate and unlawful decision against” Student. Parent further expressed his discontent with the fact that he had not prevailed in any of his previous six Hearing Requests before the BSEA and noted his objection to the “recycling” of the same female Hearing Officers to hear his cases.

This Ruling addresses Parent’s Motion for Recusal and also addresses Recalculation of the Timelines for Hearing based on Parent’s failure to serve DCF and presumably May. The issue regarding the Sufficiency of the Hearing Request and Motion to Dismiss, as well as Parent’s allegations of the inappropriateness of Student’s placement will be addressed separately.

I Recusal:

In his initial Motion, Parent states,

I am respectfully requesting that you recuse yourself from making any decisions concerning this request. You was a prior hearing officer that made a very inappropriate and unauthorized decision. Dismissing my hearing request with prejudice. A tool that was not at your disposal to dispose of the hearing request. Therefore your presence is not required. I would respectfully request a new hearing officer that did not violate my due process rights in rendering decisions in the past against this parent. that ruled against me prior or, I respectfully request a outside Atty. of both of our acceptance to conduct the hearing request process.

In deciding whether to grant a request for recusal of the Hearing Officer, there are several factors to be considered. These motions must be seriously considered by the decision-maker in order to preserve the trust and confidence of the participants in judicial or quasi-judicial proceedings that the decision-maker possesses the expertise to conduct the proceeding and will do so in a fair and impartial manner. Due process hearings must also be efficient and responsive to all of the interested parties involved.

The recusal process requires that hearing officer being challenged examine her own professional qualifications to hear the controversies before her; examine her own conscience regarding any subjective biases or pre judgments she may have about the parties or the subject matter; be alert to any objective bars in the case before her such as potential relationship-based bias, financial interest in the outcome of the case or residence within the school district; and anticipate how her conduct may “appear” to the parties and the public in general. See *In Re: Ludlow Public Schools, Ruling on Motion for Recusal*, BSEA # 1509319

(Scannell, June 30, 2015) quoting *In Re: Brocton Public Schools*, 16 MSER 367 (2010); *In Re: Duxbury Public Schools*, 14 MSER 363 (2008); *In Re: Marblehead Public Schools*, 8 MSER 84 (2002).

In his Motion, Parent does not challenge my personal qualifications, which meet and surpass the minimum requirements of BSEA Hearing Officer, nor does Parent raise any objective bars involving potential conflicts regarding a financial interest or a relationship-based bias with any of the participants. I note that Taunton and DCF attorneys as well as Parent have appeared before this Hearing Officer in previous cases.

Administrative notice of BSEA #1304738 shows that Parent had filed a previous Hearing Request on January 15, 2013 which matter was handled by this Hearing Officer. BSEA # 1304738, was the subject of a Motion to Dismiss, filed by Taunton, which resulted in dismissal of that matter with prejudice on the basis that “all of the issues raised by Parent in [BSEA #1304738 had] already been adjudicated by the BSEA, and/ or [fell] outside the jurisdiction of the BSEA”. *In Re: Taunton Public Schools, Ruling on Taunton’s Motion to Dismiss with Prejudice and Objection to the Sufficiency of the Hearing Request*, BSEA # 1304738 (Figueroa, February 26, 2013).

The Hearing Officer must also examine her own conscience and emotions to ascertain whether she is truly able to preside over a hearing in an impartial and unbiased manner. In the instant case, disagreeing with my previous Ruling and Dismissal with Prejudice⁴ Parent alleges that the Hearing Officer is biased against him and incapable of rendering an impartial decision.

Having examined my conscience in this regard, I find that I do not hold any prejudice against any of the parties and that I have not prejudged this matter nor do I have any impermissible bias. In contrast, I find that I am capable of hearing this matter fairly and that I hold no prejudice against any of the parties which could in any manner compromise my impartiality moving forward.

As such, I find that there are no objective, or subjective bars to continuing as Hearing Officer on this case.

I next turn to the appearance of impartiality. Regarding this issue, I find the language in the Ruling in *Ludlow* to offer pertinent guidance explaining that

Unsatisfactory experiences do not in and of themselves indicate partiality or bias on the part of the hearing officer, and do not without more, provide sufficient support for recusal. While reasonable people may disagree on the

⁴ Parent appears to believe that a dismissal with prejudice means that the Hearing Officer is prejudiced against him. A Dismissal with prejudice simply means that it is a final disposition and that having adjudicated the case on its merits, bringing or maintaining an action based on the same claim or cause is barred. In this regard, it is *res judicata*.

substantive merits of any decision or may experience discomfort during any part of the hearing process, I do not find on this record that a reasonable member of the public could point to any factor or circumstance causing doubt as to my impartiality”. *In Re: Ludlow Public Schools, Ruling on Motion for Recusal*, BSEA # 1509319 (Scannell, June 30, 2015).

As in the *Ludlow* matter, I too find that recusal is not warranted on the basis of appearance of impartiality, the final inquiry in the Hearing Officer’s decision to recuse from a case. Having found after careful consideration that recusal is not warranted, I hereby **DENY** Parent’s Motion for Recusal of the Hearing Officer.

Given that there are seven Hearing Officers at the BSEA it is likely that when parties file numerous cases over a period of time, some of those cases will be randomly assigned to a Hearing Officer who previously handled a case involving the same parties. This in and of itself is insufficient reason to have a Hearing Officer recuse himself or herself from a case. However, cognizant of Parent’s discomfort and the fact that it is still early in the process, an administrative reassignment of the case will not substantively or procedurally harm the parties. Similarly, a reassignment is not likely to unduly delay or cause substantial disruption in the administrative process. As such, the matter will be referred to the Director of the BSEA for a random reassignment to another Hearing Officer.

II Recalculated Timelines:

On August 17, 2015, DCF notified the BSEA that it had not been served the Hearing Request by Parent and as such requested an extension of time to respond to Parent’s Hearing Request and Taunton’s Motion, as well as copies of all of Parent’s submissions. By August 18, 2015 the BSEA had not heard anything from May. As such, all of Parent’s submissions (including a copy of the Hearing Request) were forwarded to DCF and to May on August 18, 2015.

Rule I: B of the Hearing Rules for Special Education Appeals specifically states that

To begin the hearing process, the party requesting the hearing (i.e., moving party) must send a written hearing request to the opposing party. At the same time, the moving party must send a copy of the hearing request to the BSEA. The date that the opposing party receives the hearing request is the operative date for calculating due process timelines.

This Rule is clear that timelines in BSEA matters begin to run on the date that the opposing parties (herein, Taunton, DCF and May) receives the Hearing Request. DCF notified the BSEA that it had not received any of the submissions made by Parent and by August 18, 2015, May had provided the BSEA no indication that it had received anything from Parent either. The BSEA forwarded a copy of all of Parent’s submissions to DCF and to May on August 18, 2015, which date became the operative date for purposes of calculating the timelines reflected in the new Recalculated Notice of Hearing. This matter will proceed as per the Recalculated Notice of Hearing issued on August 18, 2015.

ORDER:

1. Parent's Motion for recusal of the Hearing Officer is DENIED.
2. This matter will proceed under the timelines stated in the Recalculated Notice of Hearing issued on August 19, 2015.
3. This matter will be referred to the Director of the BSEA for administrative reassignment of the Hearing Officer.
4. Taunton's Sufficiency Challenge and Motion to Dismiss will be addressed by the newly assigned Hearing Officer.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: August 20, 2015