# **COMMONWEALTH OF MASSACHUSETTS**

**Division of Administrative Law Appeals**

**Bureau of Special Education Appeals**

**In Re: Student and Quincy Public Schools BSEA# 2202940**

 **and League School of Greater Boston**

### RULING ON LEAGUE SCHOOL OF GREATER BOSTON’S MOTION FOR CLARIFICATION

This matter comes before the Hearing Officer on the League School of Greater Boston’s (League) *Motion for Clarification* (Motion), filed with the BSEA on January 18, 2022[[1]](#footnote-1). Specifically, League sought clarification of the November 18, 2021 *Decision* (Decision) issued in this matter. On January 25, 2022, Parents and Student[[2]](#footnote-2) (Parents) filed *Student Response to League School of Great Boston Motion for Clarification* (Opposition) on January 25, 2022. Quincy Public Schools (Quincy) did not file any response to the *Motion*. No party requested a hearing on the *Motion*, and I do not find a hearing to be necessary to advance my understanding of the issues involved in the *Motion*[[3]](#footnote-3).

For the reasons articulated below, League’s *Motion* is **DENIED**, and I decline to provide further clarification of the *Decision*.

**RELEVANT PROCEDURAL HISTORY**

On November 18, 2021, I issued the *Decision*, after completion of a 2-day Accelerated Hearing (held on November 2 and 3, 2021) consisting of approximately 19 hours of stenographically recorded testimony and 47 exhibits. Attached to the *Decision,* sent to the parties via email, certified mail and regular mail, were the procedures to be followed with respect to appeal and enforcement of the decision, consistent with Rule XIII(A) of the *Hearing Rules*.

At the conclusion of the *Decision*, I issued 10 separate Orders for the parties to implement. The fifth Order and one aspect of the sixth Order are the subject of the *Motion[[4]](#footnote-4)*. The Parents oppose the *Motion* on the grounds that it is inappropriate, as the *Decision* speaks for itself, it is untimely, and is merely an attempt to delay implementation of the Orders. Finally, Parents advise that implementation has not occurred, or only just started on the majority of the Orders and suggest that “[a]t this point it would be more appropriate to file a motion for compliance rather than a motion for clarification[[5]](#footnote-5).

**LEGAL STANDARD**

Although neither the *Motion* or the *Opposition* provides any legal authority on which the Parties rely to pursue or oppose the request for clarification, I find it necessary and instructive to undertake my own examination of the applicable legal standards. In doing so, I examine both the procedural requirements of the IDEA, the Massachusetts laws and regulations pertaining to the procedural requirements of administrative adjudicatory proceedings, and the BSEA’s own procedural Rules. I also review prior BSEA cases addressing requests for clarification.

Pursuant to Rule XII(B) of the *Hearing Rules*, “[t]he Hearing Officer’s decision is the final decision of the BSEA and is not subject to further agency review. Motions to reconsider or to re-open a hearing once a decision has been issued are not permitted.” This Rule is consistent with the provisions of 20 USC 1415(i)(1)(B), providing that a decision made at a due process hearing “…shall be final, except that any party involved in such hearing may appeal such decision under the provisions of … paragraph (2)[[6]](#footnote-6).” 20 USC 1415(i)(2), in turn, states, in relevant part, that parties who do not agree with the findings and decisions made in a due process hearing,

“…shall have the right to bring a civil action with respect to the complaint presented …, which action may be brought in any [State](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-80204913-185751686&term_occur=999&term_src=title:20:chapter:33:subchapter:II:section:1415) court of competent jurisdiction or in a district court of the United [States](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=20-USC-80204913-185751686&term_occur=999&term_src=title:20:chapter:33:subchapter:II:section:1415), without regard to the amount in controversy… [within] 90 days from the date of the decision of the hearing officer ….[[7]](#footnote-7)”

Along these lines, 801 CMR 1.01(13) also states, in relevant part, that “after issuance of a final decision, … any person or appointing authority aggrieved by [it] shall be entitled to a judicial review thereof in accordance with M.G.L. c. 30A §14”. Rule XIII of the *Hearing Rules* establishes the BSEA procedures pertaining to appeals (i.e., requests for judicial review) of a BSEA decision[[8]](#footnote-8). Neither the IDEA, the Massachusetts administrative adjudicatory procedural laws or regulations, nor the *Hearing Rules* provide for requests for clarification; in fact, the only time that either the *Hearing Rules* or 801 CMR 1.01 references clarification are regarding the right to have pre-hearing conferences for, among other purposes, “clarification” of issues for a Hearing[[9]](#footnote-9).

Further, while 801 CMR 1.01 provides for requests for reconsideration, or requests for rehearing[[10]](#footnote-10) in some administrative adjudicatory proceedings in the Commonwealth, such requests are not available for a BSEA Hearing Officer’s decision, given its status as a final decision, as per the provisions of Rule XII of the *Hearing Rules*, discussed *supra*[[11]](#footnote-11). Finally, under Rule XII(C) of the *Hearing Rules*, except for certain situations not applicable to these proceedings, a BSEA Hearing Officer’s decision “shall be implemented immediately”.

The majority of BSEA cases deciding requests for clarification address requests to clarify either the issues for hearing or the issue of “stay-put” services or placements. The limited situations wherein the BSEA has addressed requests for clarification of its *Rulings* or *Decisions* recognize, at the outset, that the Hearing Officer’s original *Ruling* or *Decision* speaks for itself[[12]](#footnote-12). Despite this agreed acknowledgment, though, BSEA Hearing Officers proceed to ultimately address the requests for clarification in slightly different ways[[13]](#footnote-13).

I find no legal, procedural basis by which a party can seek clarification of a BSEA Hearing Officer’s decision under the IDEA, the Massachusetts administrative adjudicatory procedural laws and regulations or the BSEA’s own *Hearing Rules*[[14]](#footnote-14). Additionally, I find that consistent with these authorities, BSEA Hearing Officer decisions must be implemented immediately, absent limited circumstances, not applicable in this matter[[15]](#footnote-15). Finally, I find that the only further legal review options available to a party upon issuance of a decision is to appeal or seek enforcement of or compliance with it[[16]](#footnote-16). As such, I conclude that in any situation where I determine clarification is warranted to assist the parties in complying with my *Rulings* or *Decisions*, I am limited to only identifying which portions of such *Ruling* or *Decision* address the areas of confusion raised by the party seeking the clarification*[[17]](#footnote-17)*.

**APPLICATION OF LEGAL STANDARD**

Clarification is warranted in the instant matter as identifying the provisions of the *Decision* responsive to League’s concerns will serve to assist the parties to comply with it. Thus, with the above-discussed legal framework in mind, I now specifically identify the portions of the *Decision* that pertain to the two Orders in the *Decision* for whichLeague seeks clarification.

1. Order #5.

League first seeks clarification of my Order requiring League to develop a compensatory services plan for the period of time I found Student did not receive a FAPE – mid-September 2021 to the present. League advises it is confused by this Order as it cannot identify what changed in September 2021, regarding League’s implementation of Student’s program, other than sending out the September 22, 2021, letter identifying an intent to “terminate” Student. According to League, it “continued to do everything it was doing before, so if [Student] was receiving FAPE before the letter, he was receiving it after the letter as well.”

League is encouraged to review Factual Finding #82 which specifically identifies League’s actions and inactions with regards to Student’s program commencing in September 2021. Additionally, Factual Finding #88 should be reviewed as to the ways in which League did not provide Student with a FAPE commencing in September, 2021[[18]](#footnote-18). I further direct League to Parts 1 and 2 under the “Discussion” portion of the *Decision*, for my analysis in determining that “… although Student had been receiving a FAPE at League since his discharge from the hospital on May 17, 2021, this changed in early to mid-September, 2021, such that he is not receiving a FAPE currently” (*Decision*, 33-34). Specifically, League should review the provisions on pages 34 and 35 of the *Decision* as to my conclusions regarding how it stopped providing Student with a FAPE starting in September 2021. League also should review the first paragraph under Part 2 of the “Discussion” on page 37 of the *Decision* and the last full paragraph on page 38 of the *Decision*, (commencing with “[w]ith respect to what Student would require to receive a FAPE, …”) as to my conclusions on how Student could be provided with a FAPE at and by League at this time. Finally, the following specific provisions of the decision are set forth to address League’s confusion,

*“However, the record reveals that in early to mid-September, Student stopped receiving a FAPE at League. Every witness who testified agreed that Student’s current program of being educated exclusively in the residence, with only his 2:1 staff, limited access to other adults, and complete isolation from any peers is not appropriate for him. While it was originally a data-driven plan designed to reengage Student into a lesser restrictive environment, the reintegration (which should begin at Step 8) has not yet occurred* (emphasis added). Every educationally licensed and trained witness employed by League (Dr. Sherwin, Ms. White, Ms. Lussier, and Mr. Fuller) testified that Student is not currently receiving a FAPE at League. Ms. White testified even further, that should Student remain at League until he turns 22, he would continue to not receive a FAPE. All these witnesses, who are intimately familiar with League’s resources, advised that League does not have appropriately trained staff with sufficient experience to address the behaviors with which Student demonstrates. Their testimony in this regard is highly persuasive. (*Decision*, 35-36).

The other witnesses with direct, firsthand knowledge of Student, Father, Mr. Kamara, and Dr. Manea, also concluded that Student is not able to progress in his current environment, although, unlike the League witnesses, they all were of the opinion that *Student’s environment could be successfully modified at League to allow him to begin progressing again. Such modifications include the support of behaviorally and psychopharmacology trained outside consultants, garnering updated evaluative information of Student, and the increased involvement of preferred staff to assist with implementing the 2021 Reintegration Plan* (emphasis added)*.* These recommendations are consistent with the IEE’s recommendations as well. (*Decision*, 36).

…

*I agree with League that Student’s current educational environment is prohibiting Student from receiving a FAPE at this time. Additionally, despite the 21/22 IEP indicating that an FBA would be conducted, it has not been done. I find there was a deprivation of educational benefits to Student such that he no longer is receiving a FAPE* (emphasis added)*.* Student is therefore entitled to compensatory services from League to mitigate his deprivation of educational benefits from mid-September 2021 to the present. (*Id.*).

…

… *It does not appear that Quincy has undertaken these monitoring or supervision activities any differently since mid-September 2021 than it had between May 2021 and mid-September 2021, despite Student’s plateauing progress at this time. Had it done so, it likely would have recognized the need to implement some of the modifications I am ordering below, thereby enabling Student to begin receiving a FAPE again* (emphasis added). This obligation cannot be overlooked, particularly where, as here, Student is being educated at a school that is acknowledging it is no longer able to provide FAPE to Student. I therefore find that compensatory services for this lack of supervision are owed to Student by Quincy in the form of more intensive oversight and supervision[[19]](#footnote-19). (*Decision*, 37).

…

*Specifically, these witnesses testified that staff need to get to know Student and form a bond with him, refrain from touching Student when he is agitated, give Student space when he is dysregulated, and implement all elements of his BSP and ESP. According to these witnesses, ongoing staff training for all staff working with Student is another critical component for Student’s success and cannot be overlooked* (emphasis added)*.* (*Decision*, 38-39).

…

*League’s planning and programming to reintegrate Student into school after the COVID-19 closures in 2020 evidences that it knows how to successfully support Student to reengage with peers and staff after a period of isolation* (emphasis added)*.* League’s initial plan provided Student his own classroom, separate from all his peers, in the school building. Student was so successful with this plan that as evidenced by his 9/16/20 BSP, he was ready and able to begin reintegrating into the small group classroom as well as move from having no demands or tasks placed on him to having daily learning tasks and work demands given. An appropriate and successful written classroom reintegration plan was thereafter developed by the Team at the January 14, 2021 Team meeting and implemented in accordance with an IEP Amendment. (*Decision*, 40).

Currently, Student is in a more regulated state. Although he is not completely regulated, all agree that this cannot be expected of Student, given his constellation of needs. However, when he has become dysregulated, recently, the incident reports since his discharge from the hospital indicate that staff have been successful at returning him to a calm or baseline state. Moreover, there are many supports in place should he begin to cycle into a period of greater or more intense dysregulation again, including the pharmacological support of Dr. Manea, the successful previous approaches of tiered reintegration into social situations as done after COVID, the recommendations in the IEE, and the support of familiar and preferred staff who remain willing to work with Student, like Mr. Kamara, and, I believe, Ms. Lussier.” (*Decision*, 40-41).

2. Order #6.

League also seeks clarification on the portion of Order #6 requiring Mr. Kamara to be included in the required Team meeting. Specifically, League questions what Mr. Kamara’s function would be at the meeting, what to do if Mr. Kamara is not employed with League any further, what to do if Mr. Kamara fails to appear at the Team meeting, and who would compensate Mr. Kamara for his time[[20]](#footnote-20). To the extent League’s questions pertain to information not presented at the Hearing, or otherwise part of the *Decision* (i.e., the question as to what to do if Mr. Kamara is not employed with League any further or what to do if Mr. Kamara fails to appear at the Team meeting) [[21]](#footnote-21), the requested clarification is denied as motions for reconsideration after issuance of a final decision are not allowed under the BSEA Rules[[22]](#footnote-22). As discussed, *supra*, the only further legal review options available to a party upon issuance of a decision is to appeal or seek enforcement of or compliance with it[[23]](#footnote-23)

However, the *Decision* did make several Factual Findings relating to Mr. Kamara’s experience, expertise and his prior and future willingness to provide Student with his professional support. League is encouraged to review the provisions of Factual Findings #22, #35, #74, #86 and #101 as they pertain to Mr. Kamara. Further, my conclusions as to Mr. Kamara’s expertise and credibility are set forth in the first full paragraph on page 36 of the *Decision* (commencing with “[t]he other witnesses with direct, firsthand knowledge of Student …”) and the last full paragraph on page 38 of the *Decision* through the first full paragraph on page 39 of the *Decision* (commencing with “[w]ith respect to what Student would require in order to receive a FAPE, …” and concluding with the reference to “(Chery, VI, 154)”). Additionally, the provisions of Order #6, itself, provide guidance to address the questions raised by League as to Mr. Kamara’s role at the Team meeting. Specifically,

“6. The parties shall convene a Team, inclusive of … Mr. Kamara, … *along with any other relevant professionals that can help to provide input to the Team on program modifications and supports to Student both in the residence and in school*. *The Team will discuss the 2021 Reintegration Plan and modify it as necessary to enable the Student to begin spending at least a portion of his school day within the school building* unless the Team, including Team members not employed by League, feel this is not appropriate for Student at this time. *The amount of time, staffing, and location within the school building will be determined by the Team, as will the benchmarks for increasing the time in the building.* The Team … will consider using current preferred staff initially for this reentry into the school building (emphasis added).”

**ORDER**

League’s *Motion* is **DENIED**. The *Decision* speaks for itself. League is directed to review the portions of the *Decision* identified above for answers to the questions it raises regarding the two Orders for which clarification was sought.

By the Hearing Officer,

/s/ Marguerite M. Mitchell

Date: January 27, 2022

1. This *Motion* was submitted in the form of an email from League’s Counsel to all other parties. I acknowledged to the parties that I was considering this to be a *Motion for Clarification* on January 19, 2022 and advised that any written objections or requests for a hearing on the *Motion* needed to be filed by the close of business on January 25, 2022 pursuant to Rule VII(C) of the *Hearing Rules for Special Education Appeals* (Hearing Rules). [↑](#footnote-ref-1)
2. As noted in Factual Finding #1 of the *Decision*, Father is Student’s legal guardian, thus for purposes of this Ruling, I refer to Parents and Student as “Parents”. [↑](#footnote-ref-2)
3. *Hearing Rules* VI(D). [↑](#footnote-ref-3)
4. Order #5 states: “League will develop a compensatory services plan for Student for the period during which he has not been receiving FAPE, to wit: mid-September 2021 to the present.” The relevant provisions of Order #6 for which clarification is sought states: “The parties shall convene a Team, inclusive of … Mr. Kamara …”. [↑](#footnote-ref-4)
5. Other than this statement, Parents do not actually request compliance, and thus I do not consider the *Opposition* to be such a request. If Parents contend any or all the Orders are not being complied with, they must file a separate motion requesting me to order compliance with the *Decision*. Rule XIV of the *Hearing Rules*. [↑](#footnote-ref-5)
6. *See* 34 CFR 303.466(a). [↑](#footnote-ref-6)
7. *See* 34 CFR 303.448(a) and (b). [↑](#footnote-ref-7)
8. The only other procedural option regarding a BSEA decision available to parties under the *Hearing Rules* is for a party to seek enforcement or compliance with a decision per Rule XIV. [↑](#footnote-ref-8)
9. *Hearing Rule* IV(B); 801 CMR 1.01(10)(a)(1). [↑](#footnote-ref-9)
10. 801 CMR 1.01(7)(l). [↑](#footnote-ref-10)
11. Pursuant to the introductory *Scope of the Rules* section of the *Hearing Rules*, “[u]nless modified explicitly by these *Rules*, hearings are conducted under the Formal Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq*.” [↑](#footnote-ref-11)
12. *In Re: Eleanor (Ruling),* BSEA#15-03787, 21 MSER 25 (Reichbach, February 3, 2015); *In Re: Gloria v. Holyoke Public Schools et. al.(Ruling),* BSEA#05-5493, UNPUBLISHED IN MSER, (Beron, December 16, 2005). [↑](#footnote-ref-12)
13. *In Re: Framingham Public Schools and Guild For Human Services, Inc. and The Department Of Developmental Services (Ruling)*, BSEA#1808824, 24 MSER 286, n. 4 (Putney-Yaceshyn, December 26, 2018) advising that it summarily denied Guild’s request for clarification as “BSEA rules do not allow for Motions to reconsider or re-open a hearing once a decision has been issued.”; *In Re: Eleanor (Ruling)* BSEA#15-03787 (2015) declining Parents’ request to “provide ‘specific information as to exactly what records will be forwarded, what exactly will be and must be redacted on each record and on each page of records’” as it found the previous *Ruling* “speaks for itself” in that it “specified precisely what must be redacted …”; *Compare, In Re: Gloria v. Holyoke Public Schools et. al. (Ruling)* BSEA#05-5493, (2005) addressing DOE’s reasons for seeking clarification by both specifying which portions of the original *Decision* respond to the arguments made by DOE and providing additional legal analysis to support the original *Decision*. [↑](#footnote-ref-13)
14. 20 USC 1415(i)(1)(B); 20 USC 1415(i)(d); M.G.L. c. 30A; 801 CMR 1.01(13); *Hearing Rules* XII, XIII and XIV. [↑](#footnote-ref-14)
15. Id. [↑](#footnote-ref-15)
16. Id. [↑](#footnote-ref-16)
17. While I agree with *In Re: Gloria’s* rationale that there *may* be times a Hearing Officer chooses to clarify his or her decision to “assist the parties in their obligations in complying with a decision”, for the reasons set forth in the Legal Standard portion of this *Ruling, supra,* I decline to adopt the approach taken by that Hearing Officer in the instant case. 20 USC 1415(i)(1)(B); 20 USC 1415(i)(d); M.G.L. c. 30A; 801 CMR 1.01(13); *Hearing Rule* XII; *In Re: Gloria v. Holyoke Public Schools et. al. (Ruling)* BSEA#05-5493, (2005). [↑](#footnote-ref-17)
18. Parents also rely on Factual Finding #88 as contradicting the reasons relied on by League in its *Motion* to seek clarification of Order #5. While I agree with Parents’ summary of Factual Finding #88, Counsel for League, not Ms. White, filed the *Motion*, Counsel for League was not under oath in presenting his statements in the *Motion*,and the *Motion* did not contain a sworn Affidavit of Ms. White, or any other League staff. Thus, I take Counsel’s statements to be argument, only, not sworn testimony subject to procedural remedies available for lying under oath. [↑](#footnote-ref-18)
19. I note that these compensatory services were further specified in Order #9, which is separate and in addition to the compensatory plan League is ordered to develop for its failure to provide Student with a FAPE under Order #5. [↑](#footnote-ref-19)
20. I note that Order #4 addresses Quincy’s responsibility to fund any additional staff needed to implement the *Decision*. [↑](#footnote-ref-20)
21. League also comments on Mr. Kamara’s “experience, expertise, reliability and education”, with which Parent takes issue. However, as the record has closed in this proceeding, I do not consider any comments regarding new information as to Mr. Kamara’s professional qualifications or lack thereof that were not otherwise presented at the Hearing. [↑](#footnote-ref-21)
22. 20 USC 1415(i)(1)(B); 20 USC 1415(i)(d); M.G.L.c. 30A; 801 CMR 1.01(13); *Hearing Rules* XII, XIII and XIV. [↑](#footnote-ref-22)
23. Id. [↑](#footnote-ref-23)