COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

SPECIAL EDUCATION APPEALS

**Dighton-Rehoboth Regional School District v. BSEA # 2503804**

**Parent**

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC § 1400 *et seq*.), Section 504 of the Rehabilitation Act of 1973 (29 USC § 794), the state special education law (MGL ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

**RELEVANT PROCEDURAL HISTORY**

Dighton-Rehoboth Regional School District (“DR” or “the District”) requested a hearing in the above matter on September 25, 2024, and the Hearing was scheduled for October 16, 2024. On October 15, 2024, DR requested a postponement of the Hearing until November 1, 2024 to schedule a Pre-Hearing Conference and allow the Parties time to resolve their dispute. The matter was scheduled for a Zoom Pre-Hearing Conference on October 21, 2024 and the Hearing was re-scheduled to November 4, 2024.

On October 21, 2024, Parents did not join the Zoom Pre-Hearing Conference. Thereafter, on the same date, a conference call was held with Student’s Mother (“Mother”), district counsel, and the Hearing Officer. The Parties discussed the possibility of scheduling a mediation, but Mother did not agree. On November 1, 2024, DR requested a postponement of the November 4 Hearing because Parents had failed to submit exhibits, and on October 30, when DR contacted the Hearing Officer and Parents to confirm the Hearing date, Parents stated they were not available on November 4. The Parties and Hearing Officer exchanged emails to reschedule the Hearing date. The Hearing Officer proposed a date and DR confirmed its availability. Parents did not confirm the date or provide any alternate date. The Hearing was re-scheduled to November 22, 2024. Parents did not respond to an email confirming that the Hearing would proceed. Parents were provided with a Zoom link to join the Hearing. On November 22, 2024, Parents did not join the Hearing. The Hearing Officer called Mother and left a voicemail stating that the Hearing would proceed and encouraging her to participate. Parents did not participate and the Hearing proceeded in their absence via Zoom on November 22, 2024. On November 22, 2024 DR submitted a written request to postpone the closing of the record until December 13, 2024, in order to submit a closing argument which was allowed. Parents were provided a written transcript of the Hearing and an opportunity to submit a written statement of their position by the close of business on December 13, 2024. DR submitted its closing argument on December 12, 2024. Parents did not submit any written statement by the close of business on December 13, 2024 and the record closed on that date.

Those present for all or part of the hearing were:

Jennie Baglini Special Education Coordinator, Dighton Elementary School

Marie-Juanita DiGioia Director of Education, DR

Kate Lima Principal, Dighton Elementary School

Kelly Gonzalez Attorney, Dighton-Rehoboth Regional School District

Roberta Ebhert Court Reporter

Catherine Putney-Yaceshyn Hearing Officer

The official record of this hearing consists of DR’s exhibits marked S-1 through S-17; approximately 1.5 hours of recorded oral testimony; and a certified transcript.

# ISSUES

1. Whether the evaluations conducted by DR were comprehensive and appropriate.
2. If not, whether Student/Parents is/are entitled to a publicly funded evaluation at this time.

**SUMMARY OF THE EVIDENCE**

1. The student (hereinafter, “Student”) is an 8-year-old third grade student residing within the Dighton-Rehoboth school district. (S-11)
2. Jennie Baglini has been the special education coordinator at Dighton Elementary School for three years[[1]](#footnote-1). Prior to that she was a Kindergarten special education teacher for seventeen years in DR. She is responsible for chairing IEP meetings, reviewing IEPs and progress notes, and consulting with the special educators. She has been Student’s Team chair since his first grade. (Baglini)
3. In the fall of Student’s first grade Student was referred for an initial evaluation. (Baglini) Ms. Baglini has reviewed Student’s evaluations. Erin Donahue-Taylor, the first grade special education teacher, conducted an educational achievement Assessment using the WIAT-IV. Ms. Donahue-Taylor is qualified to administer the WIAT-IV. Allison Gittus, the school psychologist, conducted a psychological assessment of Student utilizing the WISC-V and BASC 3rd. The assessments used by Ms. Gittus are standardized, routinely used in the district, and Ms. Gittus is qualified to administer them. In addition to the achievement and psychological testing, Ms. Baglini testified that the District evaluated Student in the areas of occupational therapy and speech and language to address concerns around fine motor skills and language issues. (Baglini) Cara Romano, MS, CCC-SLP, administered a speech language evaluation using the CELF-5 and GFTA-3. She is qualified to administer the evaluations and used standardized assessments. Jill Castergini, OTD, OTR/L administered an occupational therapy evaluation utilizing the DTVP-3 and BOT-2, standardized assessments that Ms. Castergini is qualified to administer. (Baglini, Exhs. S-3-S-6)
4. The Team convened on February 3, 2023 to review the evaluation results. (S-16) None of the Team members, including Parents, raised any concerns about the evaluations or identified any other evaluations that should have been done. The evaluation results were consistent with the reports of the Team members. The Team found Student eligible for an IEP under the categories of health (ADHD) and developmental delay. (S-16, Baglini) An IEP was drafted. Parents were provided with a copy of the IEP Team Meeting Summary which included a statement that Parents were satisfied with the school evaluation. It was signed by one of the parents on February 3, 2023. (S-16, Baglini)
5. In March 2023, Student showed an increase in defiance, non-compliance, and unsafe behaviors. Student’s Team recommended a functional behavior assessment (FBA) to address the increase in behaviors. (S-2) Allison Gittus, conducted a brief functional Behavior Assessment. She observed Student on May 15 and 16, 2023 and wrote a report dated May 16, 2023. (S-2) The Team, including Parents, convened to review the FBA and Ms. Gittus’ recommendations were implemented. (Baglini)
6. Brooke Rennie, a licensed reading specialist with multiple master’s degrees in special education and reading, assessed Student’s reading progress on multiple dates. (S-1, Baglini) Her findings were discussed with Parents at Team meetings. (Baglini) At the January 25, 2024 Team meeting the Team considered Ms. Rennie’s assessments, the prior assessments, teacher observation, and Student’s progress. It determined that Student had a specific learning disability in reading and writing. (S-12, Baglini) The Team developed an IEP, which included specialized reading services. Parents fully accepted the IEP and placement. (S-12)
7. The Team convened again on May 9, 2024, the end of Student’s second grade. Parents reported no concerns at that time. The Team reviewed Student’s reading progress and determined that he was making progress, albeit slow. The Team proposed an amendment to Student’s IEP to add additional services in ELA. (S-15, Baglini) Parents accepted the IEP amendment on June 5, 2024. (S-11)
8. On September 18, 2024[[2]](#footnote-2), early in Student’s third grade, Parents sent a request for an independent evaluation to Marie-Juanita DiGioia, the Director of Education at DR[[3]](#footnote-3). The letter requested an independent education evaluation “to include Dyslexia testing (Test of Dyslexia), cognitive testing, achievement testing, Autism, behavioral and social emotional function by James Paicopolos, who is a licensed school psychologist…”[[4]](#footnote-4) (S-7)
9. Student is not eligible for free or reduced lunch and Parents did not provide financial information in connection with their request for an independent evaluation. (DiGioia)
10. Dr. DiGioia testified that she had met Student while he attended an ESY program which she oversaw, she had never received any concerns or complaints about Student, and had never been asked to intervene regarding his education prior to Parents’ request for an IEE. (DiGioia)
11. After receiving Parents’ request, Dr. DiGioia reviewed Student’s file to determine when he was last evaluated and asked Ms. Baglini if there were any concerns regarding Student. She further reviewed the ED-1 form to determine whether Parents had raised concerns about the assessments when they were completed. Dr. DiGioia determined that DR had completed a comprehensive evaluation of Student that was about two years old, and that Parents had accepted all of the IEPs proposed in addition to having accepted the evaluations. She further determined that the assessments used by the District were standardized, widely accepted by educators, routinely used in the District, appropriate to assess the areas of possible disability, and sufficient to determine Student’s eligibility for special education. She confirmed that the professionals who evaluated Student were qualified to do so. (DiGioia)
12. Dr. DiGioia responded to Parents’ request by email on September 18, 2024. She requested that Parents allow the district to complete updated testing prior to proceeding with an IEE. She noted that if Parents were not satisfied with DR’s evaluations, they could proceed with an IEE at that time. (S-8) She asked that Parents respond by September 20, 2024. Parents responded on September 20, asking if they could consider their options over the weekend and respond the following Monday. On Monday September 23, 2024, Dr. DiGioia followed up with Parents, reiterating DR’s request that it be allowed to evaluate Student first. Parents responded by stating their intent to have James Paicopolos evaluate Student at their home as they did not think Student should have to miss his specials and academics and thought he would be focused and attentive to his work at home. (S-8, DiGioia)
13. Ms. Baglini and Dr. DiGioia shared the opinion that there was no reason that Student had to be evaluated in his home or outside of regular school hours. (Baglini, DiGioia)
14. DR requested a Hearing at the BSEA on September 25, 2024. (See administrative record.)
15. On September 25, 2024, Dr. DiGioia received an email from James Paicopolos in which he offered to conduct an evaluation of Student pro bono. (S-9)
16. On October 1, 2024, Dr. DiGioia emailed Parents confirming her receipt of Mr. Paicopolos’ email and offer to conduct the evaluation pro bono. She then asked whether Parents were still requesting that DR fund the evaluation. She noted that she had not responded to Mr. Paicopolos’s email because she did not have parental consent to communicate with him. (S-8) Parents did not respond to Dr. DiGioia’s email and on October 3, 2024, Dr. DiGioia sent them another email. She asked whether they intended to have Mr. Paicopolos complete the testing and reiterated her inquiry as to whether they continued to seek district funding for the evaluation given the offer to complete it pro bono. Dr. Gioia offered to have a conversation with Parents about the evaluation. (S-10) Parents did not respond to this email and never provided consent for DR to communicate with Mr. Paicopolos about Student. (DiGioia)
17. On November 4, 2024, DR sent an evaluation consent form to Parents. As of the date of Hearing, Parents have not returned the consent form. (Baglini)
18. The District does not know whether Mr. Paicopolos has evaluated Student. It has not received an evaluation report or a request for information from Mr. Paicopolos. (Baglini, DiGioia)

**FINDINGS AND CONCLUSIONS:**

Student is an individual with a disability, falling within the purview of the Individuals with Disabilities Education Act (IDEA)[[5]](#footnote-5) and the state special education statute.[[6]](#footnote-6) As such, he is entitled to a free appropriate public education (FAPE). Neither his status nor his entitlement is in dispute. The Parties, however, disagree as to whether Student is entitled to a publicly funded evaluation at this time.

Federal regulations address parents’ right to a publicly funded independent educational evaluation at 34 CFR 300.502(b)

 as follows:

(b) Parent right to evaluation at public expense.

(1) 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 the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to § 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency’s evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent’s reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

Massachusetts regulations address independent educational evaluations as follows:

Independent education evaluations. 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.

(d) If the parent is requesting an independent education evaluation in an area not assessed by the school district, the student does not meet income eligibility standards, or the family chooses not to provide financial documentation to the district establishing family income level, the school district shall respond in accordance with the requirements of federal law. Within five school days, the district shall either agree to pay for the independent education evaluation or proceed to the Bureau of Special Education Appeals to show that its evaluation was comprehensive and appropriate. If the Bureau of Special Education Appeals finds that the school district's evaluation was comprehensive and appropriate, then the school district shall not be obligated to pay for the independent education evaluation requested by the parent.

603 CMR. 28.04(5)

DESE addressed independent educational evaluations in an October 2003 Advisory , indicating that,

If a parent requests an IEE more than 16 months after the school district evaluated the student, the best practice would be for the district to seek consent from the parent to conduct its own updated assessments and evaluation of the student first, within the timelines required by the special education regulations.

If a parent requests an IEE in an area not assessed by the school district, the best practice would be for the school district to review its evaluation and determine whether the requested assessment(s) would provide needed additional or new information about the student's disability and if so, offer to conduct the additional assessment(s) itself with the parent's consent.

DESE Administrative Advisory SPED 2004-1, October 23, 2003.

DR argues that Parents are not entitled to public funding of an independent educational evaluation at this time for three reasons. First, they have not met any of the conditions for independent educational evaluation by either establishing a financial need or disagreeing with the District’s evaluations. Second, the District’s evaluations were comprehensive and appropriate and the Parents declined the District’s request to re-evaluate Student prior to the IEE. Finally, to the extent that Mr. Paicopolos conducted the assessment free of charge, the Parents would not be entitled to public funds as reimbursement. [[7]](#footnote-7)

At the outset, Parents neither indicated that they disagreed with findings of the district’s evaluations nor provided any testimony or documents to evidence such disagreement. The September 18, 2024 letter to DR requesting an independent educational evaluation, did not state that they disagreed with DR’s evaluations. In fact, the district provided evidence that Parents affirmed their satisfaction with the evaluations at the February 3, 2023 Team meeting.

Further, DR has shown that its evaluations were both comprehensive and appropriate. Ms. Baglini reviewed the initial evaluations and provided uncontroverted testimony that the evaluations were comprehensive and appropriate, utilized standardized and widely accepted evaluations, and were conducted by qualified staff. The selected evaluations were based upon Student’s individual needs. Further, the evidence shows that DR conducted additional testing so as to meet Student’s ongoing needs, including the May 2023 FBA and the ongoing reading assessments to monitor progress. There was no evidence offered by Parents to demonstrate that DR’s evaluations were not comprehensive or appropriate.

Moreover, upon receipt of Parents’ request for an independent educational evaluation, DR offered to move up Student’s three-year evaluation. Although the District did not believe that Student required an earlier evaluation, its response was consistent with the “best practice” outlined in DESE Advisory SPED-2004-1. Dr. DiGioia informed Parents that if they were not satisfied with the results of the advanced three-year evaluation, they could then proceed with an independent educational evaluation at DR’s expense. Parents did not consent to the evaluation.

Based on the foregoing, I find that DR has met its burden with respect to the issues before me in this matter.

**ORDER**

1. I find that the evaluations conducted by DR were comprehensive and appropriate.
2. Student/Parents are not entitled to a publicly funded evaluation at this time.



Dated: January 7, 2025

COMMONWEALTH OF MASSACHUSETTS

BUREAU OF SPECIAL EDUCATION APPEALS

EFFECT OF FINAL BSEA ACTIONS AND RIGHTS OF APPEAL

# Effect of BSEA Decision, Dismissal with Prejudice and Allowance of Motion for Summary Judgment

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Similarly, a Ruling Dismissing a Matter with Prejudice and a Ruling Allowing a Motion for Summary Judgment are final agency actions. If a ruling orders Dismissal with Prejudice of some, but not all claims in the hearing request, or if a ruling orders Summary Judgment with respect to some but not all claims, the ruling of Dismissal with Prejudice or Summary Judgment is final with respect to those claims only.

Accordingly~~,~~ the Bureau cannot permit motions to reconsider or to re-open either a Bureau decision or the Rulings set forth above once they have issued. They are final subject only to judicial (court) review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. This means that the decision must be implemented immediately even if the other party files an appeal in court, and implementation cannot be delayed while the appeal is being decided. Rather, a party seeking to stay—that is, delay implementation of-- the decision of the Bureau must request and obtain such stay from the court having jurisdiction over the party’s appeal.

Under the provisions of 20 U.S.C. s. 1415(j), “unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement,” while a judicial appeal of the Bureau decision is pending, unless the child is seeking initial admission to a public school, in which case “with the consent of the parents, the child shall be placed in the public school program.”

Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child’s placement while judicial proceedings are pending must ask the court having jurisdiction over the appeal to grant a preliminary injunction ordering such a change in placement. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

# Compliance

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

# Rights of Appeal

Any party aggrieved by a final agency action by the Bureau of Special Education Appeals may file a complaint in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review. 20 U.S.C. s. 1415(i)(2).

An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

# Confidentiality

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove School District v. Pulitzer Publishing*

*Company*, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

Record of the Hearing

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.

1. Ms. Baglini has a bacherlor’s degree in early childhood education and a Master’s degree in special education. She is licensed in early childhood (preschool – grade 2) and special education (pre-K-grade 9). (Baglini) [↑](#footnote-ref-1)
2. Parents’ letter was dated September 17, 2024, but received by Dr. DiGioia on September 18, 2024. (DiGioia, S-8) [↑](#footnote-ref-2)
3. Dr. DiGioia has a bachelor’s degree in elementary education and special education, a Master’s degree in administration, and a doctorate in special education. She is licensed as a special education teacher (pre-K – age 22); a principal, an assistant principal, and a professional Special Education Director. (DiGioia) [↑](#footnote-ref-3)
4. James Paicopolos is a psychologist with whom the District had contracted for services the prior year, but who is no longer employed in the District. (DiGioia) [↑](#footnote-ref-4)
5. 20 USC 1400 *et seq*. [↑](#footnote-ref-5)
6. MGL c. 71B. [↑](#footnote-ref-6)
7. Parents did not provide any explanation for not accepting Mr. Paicopolos’ offer to conduct an independent educational evaluation pro bono. Since there is no evidence that he ever evaluated Student or that Parents have funded and are seeking reimbursement with respect to any such evaluation, it is not necessary to address DR’s argument with respect to Mr. Paicopolos. [↑](#footnote-ref-7)