**COMMONWEALTH OF MASSACHUSETTS**

*Division of Administrative Law Appeals*

**Bureau of Special Education Appeals**

**In Re**:   Student v.  **BSEA #** 2510207
 Longmeadow Public Schools

**Corrected Ruling on Longmeadow Public Schools’ Motion for Summary Judgment/ Motion to Dismiss, and Ruling on Parent’s Motion for Recusal/ Objection to Procedural Irregularities**

On March 21, 2025, Parent in the above-referenced matter filed a Hearing Request, and later, on April 4, 2025, amended said Hearing Request.[[1]](#footnote-1)

Following issuance of a June 17, 2025, ruling addressing discovery and seeking clarification regarding the issues for Hearing, via letter dated June 24, 2025, Parent agreed with the issues delineated by the Hearing Officer and noted that her challenges to the District involved the 2022-2023 and 2023-2024 school years. The relief desired by Parent includes reimbursement for her unilateral placement of Student for the 2024-2025 school year, prospective placement for the 2025-2026, and 2026-2027 school years and other remedies delineated later in this Ruling. Parent’s June 24, 2025 letter sought an opportunity to amend and/ or retract and refile discovery, clarifying that she sought discovery of communications not reflected in Student’s official file. Parent further requested reconsideration of the discovery ruling regarding interrogatory #26 (involving global complaints by other students about a specific teacher), noting her amenability to having the names of those students redacted and/or subject to protective orders, to ensure those students’ confidentiality. Parent’s June letter further stated that Student’s 9th grade IEP (for the 2022-23 school year) was the operative stay-put placement during 10th grade, and given her allegation that the District failed to implement it with fidelity, full factual inquiry into said IEP was warranted. Lastly, Parent requested a hearing on any dispositive motion involving limiting the scope of the Hearing.

On June 25, 2025, Longmeadow Public Schools (District or Longmeadow) filed a Motion for Summary Judgment/ Motion to Dismiss, with attachments. Parent opposed Longmeadow’s Motion on June 25, 2025, and she again requested a hearing on the Motion.

On June 25, 2025, Parent filed a separate Motion, seeking recusal of the Hearing Officer and objecting to procedural irregularities.[[2]](#footnote-2)

This Ruling addresses all motions and requests filed to date.

1. **Motion For Summary Judgment and/ or Motion to Dismiss**:

The District’s Motion is being decided in consideration of the Parties’ submissions including Parent’s Hearing Request as Amendment on May 5, 2025. Since a motion session would not advance the undersigned Hearing Officer’s understanding of the issues to be decided, Parent’s request to be heard on the instant Motion is **DENIED.**

**Facts[[3]](#footnote-3)**:

1. Student is a sixteen- year-old eligible student who resides with Parent in Longmeadow, Massachusetts. Student has been diagnosed with Attention Deficit Hyperactivity Disorder-Combined Type (ADHD) and Secondary Emotional- Anxiety. He possesses solid cognitive abilities (SE-1).
2. Student attended Longmeadow Public schools during the 2022-2023 and 2023-2024 school years. During the 2024-2025 school year, he was unilaterally placed by Parent at the Flex School for which Parent now seeks retroactive and prospective funding (Amended Hearing Request).
3. Following a Team meeting on March 18, 2022, Longmeadow developed an IEP for the period from 3/18/22 to 3/17/2023, grade 9, calling for Student to receive accommodations and “C Grid” counseling and academic support services to address his social-emotional/self-management needs. This IEP offered Student participation in a full inclusion program. (SE-1; SE-2). The Notice of Proposed Action (“N1”) accompanying this IEP notes that Parent was provided the Notice of Procedural Safeguards on September 21, 2021, and invites Parent to contact the school if she has any questions (SE-2). Parent fully accepted this IEP and placement on April 15, 2022 (SE-1).
4. The 3/2022 to 3/2023 IEP indicates that Student met or exceeded curriculum expectations in math, science and civics during the eighth grade. He mastered new content quickly and was able to track his assignments and proficiently complete all of his schoolwork electronically. Student’s challenges with written expression as well as the benefits he drew from prompting to expand his ideas are further noted (SE-1).
5. On November 18, 2022, Student’s Team reconvened to discuss Student’s progress and the Team recommended amending the IEP to provide Student access to assistive technology and the option to submit assignments electronically. Counseling services were removed from the IEP as Student was not accessing this service. The amendment also provided an accommodation permitting Student “24 additional hours to submit assignments electronically when assignments were [not] completed on time” (SE-3). The N1 reflects that Parent’s and staff input was considered in formulating this amendment (*Id*.). The Amendment would be implemented after parental consent was received. On December 10, 2022, Parent fully accepted the Amendment (SE-3).
6. Student’s Team reconvened in early April of 2023 and drafted an IEP for the period from 4/4/23 to 4/3/24. This IEP offered Student accommodations and “C Grid” academic support in a full inclusion setting (SE-4).
7. On May 10, 2023, Parent rejected the IEP, consented to the placement and requested a meeting to discuss her rejection (SE-4). Parent’s rejection was based on her opinion that her goals for Student and those of the District were not aligned, and further that that Student should be “completely paperless”.[[4]](#footnote-4)
8. Following reconvening of the Team on May 18, 2023, and a lengthy discussion to discuss Parent’s rejection, Student’s needs and performance, an N1 was issued on May 19, 2023, reflecting the Team’s proposal to complete comprehensive evaluations[[5]](#footnote-5) to ascertain if Student continued to meet eligibility criteria and if so, what supports were necessary for Student to access the least restrictive environment. The N1 notes Parent’s receipt of the Notice of Procedural Safeguards on September 19, 2022, and invites Parent to speak or meet with the school staff if she has any questions regarding the district’s proposal or her procedural rights (SE-5). Additionally, a very detailed consent form naming specific tests, areas to the tested and specific individuals to be contacted for purposes of the evaluation was attached (SE-5).
9. On September 12, 2023, Parent consented to the evaluations and requested additional assessments, to wit: “Disgraphia, Dislexia [sic], OT-Sensory Processing, Anxiety, ADHD and Home piece” (SE-5).
10. Student’s Team convened on November 17, 2023, to discuss the results of the evaluations and completed the discussions regarding eligibility at a second meeting on December 20, 2023 (SE-6). After considering input from Parent, a family advocate and the District staff, the Team found Student eligible on the basis of a Health Impairment (ADHD) and an Emotional Impairment (anxiety). (*Id*.; SE-7). The N1 notes that Parent questioned whether Student presented with a specific learning disability in written expression (SE-6).
11. The IEP resulting from the November and December 2023 meetings covered the period from 12/20/2023 to 12/19/2024. It included goals for self-management and writing, offered accommodations, biweekly academic support, and recommended a full inclusion program in Longmeadow (SE-7). On January 22, 2024, Parent fully accepted the IEP and placement (SE-7).
12. On or about May 17, 2024, Parent had a telephone conversation with Ms. Keenan, Longmeadow High School Special Education Supervisor. In an undated email exchange between Parent and Ms. Keenan, reiterating key points of the conversation, Ms. Keenan writes:

I would like to reiterate the key points of our phone conversation. First, no team member is able to unilaterally make decisions about accommodations or modifications without a full team meeting. However, some of the requests you had were not options that could be considered as I have explained below:

-We are unable to withdraw [Student] from English, a required course for graduation, as that would be a denial of a free appropriate public education (FAPE). Students that do not take an English course as listed in our educational opportunities book are not diploma eligible.

-We are unable to permit [Student] to go to Mr. Webber's room in lieu of English as this would deny him the least restrictive environment (general education setting) for learning.

-[Student] does not require a tutor as he is able to attend school, unless otherwise specified by the completion of the Physician’s Affirmation of Need for Temporary Home or Hospital Education for Medically Necessary Reasons form. A tutor cannot replace the general education instruction from a certified English teacher in this situation.

-Switching teachers, if ever an option, is not a decision made by an IEP team. However, [Student] was offered to switch teachers twice this year. He declined both times (SE-8).

1. Ms. Keenan’s undated email goes on to state that,

Students are considered for in school virtual options for a variety of reasons. We discussed how there were 11 English classes left, and [Student] was passing for the year. In order to start an online option now, we would have to start over semester 2. These semester long online courses typically take students four months to complete, which would require Student to do additional and/or duplicate work in English. I want to be candid in saying that I do not believe this would be in Student’s best interest due to his aversion to English and the additional burden this would place on him. However, if you would like the team to consider this option, we can convene to discuss.

If Student fails English for the year and is eligible for credit recovery, he will have an option to replace his lowest quarter of English with a quarter equivalency over the summer. There are both in person and online options for this.

As a reminder, alternative solutions to being dismissed were offered, such as having a special education staff member attend English with Student and the option to process his anxiety with a school social worker so he can access English (SE-8).

1. While Student reported to Ms. Keenan that he was enjoying school, feeling relief and managing his workload, Parent reported that Student continued to experience anxiety because of English class (SE-8). Ms. Keenan further assured Parent that the District continued to work with Student on completing his assignments so he could pass his English class, expressing deep concern over Student’s resistance to turning in completed work or even doing the smallest of tasks such as “putting a title on a paper to hand in”. She noted that during that week, Student had chosen to game to prevent losing his progress rather than completing his work (SE-8).
2. Later, via email to Parent on June 7, 2024, Ms. Keenan wrote that Parent had failed to contact her regarding a plan for Student as they had previously agreed on May 17, 2024, and had not responded to Ms. Keenan’s emails of May 20 and 21, 2024. Ms. Keenan further reminded Parent that Student would not be returning to English class until he met with the school social worker (SE-8).
3. As of June 7, 2024, Student’s grades were as follow: B- in Chemistry; A in Wellness; C+ in AP Computer Science; B- in Latin II; B in Modern World History; B in Geometry; and D- in English (SE-8).
4. On or about June 27 and 28, 2024, Parent, Ms. Paris[[6]](#footnote-6), Ms. Keenan, and Mr. Landers exchanged emails regarding Student’s English class. Mr. Landers’ feedback following a meeting between Parent and the Longmeadow staff on Friday June 28, 2024, is also included (SE-8). These emails reflect: that Student was offered to change to a different English class in April of 2024, and, previously, during a Team meeting in the fall of 2023, and he declined both times[[7]](#footnote-7); Longmeadow staff members’ offers to meet with Student and/ or Parent in person or by phone to discuss the family’s concerns regarding English, to update the family regarding the School’s investigation into incidents involving the English class, and to address Student’s absenteeism and failure to complete work in that class[[8]](#footnote-8) (SE-8).
5. Following consultation with an attorney, on June 27, 2024, Parent wrote to Ms. Paris-Kro and Mr. Landers summarizing her complaints, including Longmeadow’s alleged resistance to implementing accommodations, delays in providing the requested assistive technology, denials of FAPE, and failure to provide Student with a supportive environment. Parent noted that despite her advocate’s and her own attempts to remedy the situation through multiple IEP meetings and conversations, Parent’s concerns had not been resolved. As such, Parent requested two years of prospective public funding for Student’s attendance at the Flex School- Cloud Campus and that Student retain eligibility and be permitted to participate in in extracurricular activities, including Robotics, skiing, and others until he graduated from High School. (Parent’s Amended Hearing Request).
6. On June 28, 2024, following her initial acceptance in January 2024, Parent rejected the IEP and placement covering the 12/20/2023 to 12/19/2024 period as well as the results of the neuropsychological evaluation conducted by the District, and requested public funding for an independent educational evaluation (Parent’s Hearing Request and Amended Hearing Request). Parent disagreed with the diagnosis of Asperger’s/Autism Disorder, opined that Student’s graphomotor and expository writing findings had been downplayed and opined that the re-evaluation process was influenced by internal biases as opposed to parental input. She further asserted that the “assistive technology was not provided in a timely manner”. In addition, Parent requested immediate inclusion of counseling services in Student’s IEP, along with a social emotional goal, stating that the then-current IEP failed to properly address Student’s mental health needs (Parent’s Hearing Request).
7. On July 29, 2024, Parent informed Longmeadow that she intended to unilaterally place Student at the Flex School- Cloud Campus due to the District’s failure to appropriately serve Student, and sought public funding for this placement. (Parent’s Hearing Request).
8. Via email on July 29, 2024, Nicole Paris-Kro acknowledged receipt of Parent’s requests. Said acknowledgement included an agreement to fund an independent educational evaluation at the Massachusetts prescribed rates, and offering a list of such evaluators. The acknowledgement also set forth the need to reconvene the Team within 10 school days after the start of the 2024-2025 school year to discuss Parent’s proposed revisions to the IEP and sought clarity regarding the communications that Parent was seeking. Parent responded later on same date, stating that there were two individuals she was considering for the evaluation and inquiring about the allowable rate. Parent further indicated that she did not wish to wait for the Team to reconvene to modify Student’s IEP, and noted that she would be meeting with the Superintendent later that day. Lastly, she clarified that she sought records of all communications involving Student and Ms. Federov, Ms. Keenan, Mr. Webber, Ms. Giampitro, Mr. Rosemond, Ms. Landers and Ms. Rodirguez. Ms. Paris-Kro wrote to Parent on August 9, 2024, informing her that the communications sought would be available for pick-up on or about August 9, 2024 (Parent’s Hearing Request).
9. On March 21, 2025, Parent requested a hearing before the BSEA. Later, on May 5, 2025, she filed an Amended Hearing Request seeking retroactive reimbursement for her unilateral placement of Student at the Flex School- Cloud Campus, and two more years of prospective placement, reimbursement for the full amount of Student’s 2025 independent evaluation, and permission for Student to participate in the District’s extracurricular activities until he graduates from high school. (Amended Hearing Request).
10. The Flex School is not a Massachusetts approved special education school consistent with 603 CMR 28.09 (Amended Hearing Request; District’s Response to the Hearing Request).
11. **Legal Standards**:
12. **Motion to Dismiss**:

BSEA hearing officers may consider a motion to dismiss pursuant to Rule XVII (A) and (B) of the BSEA Hearing Rules for Special Education Appeals and the *Standard Rules of Adjudicatory Practice and Procedure[[9]](#footnote-9)*, at 801 CMR 1.01(7)(g)(3). A motion to dismiss may be granted when the party requesting the hearing (Parent in the instant case), fails to state a claim upon which relief can be granted. The aforementioned rules are analogous to Rule 12(b)(6) of the Federal and Massachusetts Rules of Civil Procedure which offer further guidance when testing the sufficiency of the pleadings pursuant to a motion to dismiss.[[10]](#footnote-10)

To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”[[11]](#footnote-11) Additionally, the hearing officer must take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff’s favor.”[[12]](#footnote-12)  If the pleadings so viewed fail to support a plausible claim for relief, the case may be dismissed.[[13]](#footnote-13)

However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice… as they are not entitled to the assumption of truth.” [[14]](#footnote-14) To survive dismissal, the “[f]actual allegations must be enough to raise a right to relief above the speculative level.”[[15]](#footnote-15)

If, after taking as truethe allegations raised in the hearing request, the hearing officer finds that the party requesting the hearing can prove no set of facts entitling that party to the types of relief available at the BSEA under state or federal special education law[[16]](#footnote-16), or Section 504 or the Rehabilitation Acts of 1973[[17]](#footnote-17), the hearing request must be dismissed.

1. **Motion for Summary Judgment**:

Rule 56 of the Massachusetts Rules of Civil Procedure (MRCP) and the Federal Rules of Civil Procedure (FRCP) allow summary decisions when no genuine issue as to any material fact exists entitling the moving party to a judgment as a matter of law.

801 CMR 1.01(7)(h), applicable to administrative proceedings in Massachusetts and the BSEA, provides that summary decision may be granted when there is “no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law.”  A fact is “material” if it could potentially affect the outcome of the case.[[18]](#footnote-18)  A dispute is “genuine” when the evidence indicates it could be reasonably resolved in favor of either party.[[19]](#footnote-19)  When there is not genuine issue of material fact, the party requesting summary judgment will prevail. In the context of a motion for summary judgment, the mere existence of some alleged dispute of fact is insufficient to defeat an otherwise properly supported motion.[[20]](#footnote-20)

The party requesting summary judgment carries the burden of proof. That is, the moving party must affirmatively demonstrate the absence of a genuine material dispute of fact, and show that it is entitled to a summary decision as a matter of law.[[21]](#footnote-21)  To satisfy its burden the moving party must submit affirmative evidence that negates an essential element of the opposing party's case, or demonstrate that at trial, the non-moving party has no reasonable expectation of proving an essential element of his/ her case. *Flesner v. Technical Comm. Corp*., 410 Mass. 805, 809 (1991); *Kourouvacilis*, 410 Mass. at 716.

In turn, the non-moving party must present specific factual evidence showing that there is a genuine issue for hearing and that there is sufficient evidence in their favor to permit a reasonable fact finder to decide for them in order to survive a motion for summary decision.[[22]](#footnote-22)  This requires that the evidence, not just the pleadings, be sufficiently substantial or relevant enough to overcome summary decision.[[23]](#footnote-23)

The decision-maker must view the evidence and draw all inferences in the light most favorable to the party opposing summary judgment when reviewing a motion for summary judgment.[[24]](#footnote-24)

1. **Statute of Limitations**:

20 USC §1415 (b)(6)(B, establish a two-year statute of limitations in the context of special education cases, unless one of two exceptions is met. Consistent with the IDEA and MGL c. 61B, Rule 1 C. of the *Hearing Rules for Special Education Appeals* provides that,

A parent or agency shall request an impartial due process hearing within two (2) years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. This timeline does not apply if a parent was prevented from requesting a hearing due to either specific misrepresentations by the school district that it had resolved the problem forming the basis of the hearing request or the school district’s withholding of information from that parent that was required to be provided under federal law.

1. **Application of Legal Standards**:

Consistent with the Amended Hearing Request, Parent challenges the District’s provision of FAPE during the 2022-2023, 2023-2024 and 2024-2025 school years, and seeks compensatory and prospective relief in the form of: a) public funding for Student’s unilateral placement at Flex School- Cloud Campus for the 2024-2025 school year and prospectively for the 2025-2026 school year; b) an additional year of compensatory education at the Flex School- Cloud Campus; c) assistive technology (not to exceed $1,500); d) $5,480 reimbursement for Student’s 2025 independent evaluation; e) Flex School- Cloud Campus to be determined to be Student’s stay-put placement; and f) that Student be allowed to participate in extracurricular activities (including Robotics, ski club and ultimate frisbee) through Longmeadow until he graduates from high school.

In general, Parent’s claims are based on her assertions that the District failed to implement necessary accommodations during the 2023-2024 school year, which had previously been provided during the 2022-2023 school year, as well as substantive challenges to the IEP covering the period from December 2023 to December 2024, rejected in June of 2024.

Specifically, the issues for Hearing (with which Parent agreed) were delineated in a Ruling issued on June 17, 2025. Those are:

1) Whether Longmeadow failed to offer Student a FAPE by failing to provide services and accommodations in Student’s 9th grade IEP (the 2022-2023 school year);

2) Whether Longmeadow failed to offer Student a FAPE by failing to provide services and accommodations in Student’s 10th grade IEP (the 2023-2024 school year);

3) Whether Longmeadow violated Student’s and Parent’s procedural due process rights during the 2022-2023 and 2023-2024 school years; whether Longmeadow violated the child find requirement of the law in failing to identify a specific learning disability in written expression;

4) Whether Longmeadow illegally excluded Student from his English class, discouraged the use of assistive technology and restricted his participation in extracurricular activities in response to disability-related behaviors and advocacy during the 10th grade;

5) Whether Longmeadow retaliated against Parent in violation of Section 504 and Title II of the ADA;

6) Whether Longmeadow created a hostile educational environment for Student during the 9th and 10th grades.

Remedies sought by Parent include a declaratory judgment regarding the District’s alleged violations of FAPE (including child-find violations), social-emotional and educational harm to Student, training to District staff and referral of the matter to DESE. As set out *supra*, she also seeks retroactive and prospective placement at the Flex School-Cloud Campus, for Student to be allowed to participate in the District’s extracurricular activities, up to $1,500 in additional funds to cover assistive technology and reimbursement for the 2025 independent educational evaluation conducted by Nicole Kassissieh. (Parent’s Amended Hearing Request).

Through its Motion, the District seeks summary judgment and/ or dismissal of claims: extending beyond the two-year statute of limitations; relating to any and all accepted, implemented and expired IEPs; and falling outside the jurisdiction of the BSEA.

***Application of the Statute of Limitations***:

The IDEA statute of limitations provides that the scope of a hearing is limited to violations occurring no more than two years from the date of filing.[[25]](#footnote-25) Consistent with this limitation, Parent’s challenges herein are limited to alleged violations occurring on or after March 21, 2023, that is the spring of the 2022-2023 school year, unless she can prove that one of the exceptions provided in the statute applies.

The statute of limitations may only be extended if there is a clear showing that: a) Parent was prevented from requesting a hearing due to either specific misrepresentations by the school district that it had resolved the problem forming the basis of the hearing request; or b) the school district’s withheld information that it was required to provide under federal law.

Here, Parent’s arguments in support of extending the statute of limitations beyond 2 years are no more than speculative conjecture. She presents no documentation to support her assertion that either of the exceptions to the 2-year statute of limitations applies. On the contrary, as discussed *infra*, the District was transparent and responsive. Parent accepted the IEP covering the period from March 2022 to March 2023, and she did not partially reject the April 4, 2023 to April 3, 2024 until May 10, 2023, thereafter, accepting the superseding IEP in January of 2024. Parent did not reject the December 2023 to December 2024 IEP until late June of 2024, well beyond the expiration of the April 2023 to April 2024 IEP’s time frame.

The issues raised by Parent throughout the periods of time covered by the 2022-2023 and 2023-2024 IEPs were known, discussed and addressed by the Parties through evaluations, discussions and/or modifications to IEPs. Moreover, the March 2022 to March 2023 IEP was accepted, implemented and had expired before the District received Parent’s partial rejection to the subsequent IEP covering the period from April 2023 to April 2024. Given that Parent filed the instant Hearing Request on March 21, 2025, and consistent with the IDEA’s two year~~s~~ statute of limitations, she may proceed with claims arising on or after March 21, 2023.

Parent’s request to extend the statute of limitations beyond March 21, 2023, is **DENIED**. The balance of the analysis in this Ruling will thus be limited to claims beginning in March of 2023, two years prior to her filing of the instant Hearing Request.

***Summary Judgment****:*

It is well established that once an accepted and implemented IEP has expired, it is no longer subject to re-visiting, if the parent was provided the Parent’s Notice of Procedural Safeguards and an opportunity to participate in the development of the accepted and implemented IEP. Here, the evidence demonstrates that Parent in fact received the Notice of Procedural Safeguards, she participated in Team meetings and there was ongoing communication with the District throughout the periods in question.

Turning to the period from March of 2023 to December of 2023 (spring of the 2022-2023 and the fall of the 2023-2024 school years), the evidence shows that following Parent’s partial rejection of the IEP in May of 2024, stay-put services, consistent with the IEP covering 3/08/2022 to 3/17/2023, were in effect while the evaluations to which the Parties agreed were underway and until the new IEP was developed in December of 2023. In January of 2024, Parent accepted the IEP covering the period from 12/20/23 to 12/20/24 in full and the District began implementation of said IEP. Parent did not reject the 12/20/23 to 12/20/24 IEP until June 28, 2024. By then the previous IEP, that is, th 4/4/2023 to 4/3/2024 had expired.

To the extent that the 12/20/2023 to 12/19/2024, IEP superseded the April IEP, Parent’s subsequent rejection only protects her claims from December 2023 forward, as any FAPE claims arising from the April 2023 IEP would have been extinguished by her acceptance of the December 2023 IEP in January of 2024, and the fact that she did not reject that IEP until June of 2024.

As no genuine issue of material fact exists either as to the acceptance of the IEP covering the period from April 2023 to April 2024 or its constituting FAPE, the District’s Motion for Summary Judgment as to Parent’s FAPE claims for the period is **ALLOWED**. Parent however, may proceed with claims involving implementation of services during that same time period, as there is a dispute of fact on the issue of implementation.

Turning to the December 2023 to December 2024 IEP, following initial acceptance in January of 2024, Parent rejected this IEP in full in June of 2024. Parent also rejected findings in the District’s neuropsychological evaluation, and requested funding for an IEE. Her Amended Hearing Request (although factually vague and confusing as to specific timeframes and specific allegations), alleges denials of FAPE, due process violations and failure to implement services following acceptance of the IEP promulgated in December of 2023 and subsequent rejection of same in June of 2024, such rejection occurring within the life of the IEP.

Given that Parent has raised disputes of material facts involving implementation of the IEP and denials of FAPE for the period from 12/20/2023 to 12/19/2024, the District’s request for summary judgment for the period covered by this IEP is **DENIED**.

***Motion to Dismiss***:

The evidence shows that following acceptance of the 12/20/2023 to 12/19/2024 IEP on January 22, 2024, Parent later rejected that IEP on June 28, 2024. Parent later rejected the successor IEP issued in December of 2024. The District argues that since none of the allegations raised in Parent’s Amended Hearing Request addresses any specific denials of FAPE for the period from 12/19/2024 through 5/5/2025 IEP, her claims for this time period should be dismissed. Parent disputes the District’s assertions, arguing that in failing to evaluate Student for a specific learning disability, including during the 2024-2025 period, the District violated its child find obligations under the IDEA. Longmeadow responded that it had not failed its child find mandate because in 2023, it had tested Student in all suspected areas of need and had found Student eligible to receive special education services.

Both the December 2023 and the December 2024 IEP periods fall squarely within the two year statute of limitations. ~~and~~ Parent’s Amended Hearing Request raises the plausibility of a claim, which, in the context of a motion to dismiss, is all she is required to do to survive the motion. As such, Parent may proceed to Hearing regarding her FAPE denial allegations during the 2024-2025 school year.[[26]](#footnote-26) The District’s Motion to Dismiss those claims is **DENIED**.

*Motion to Dismiss Section 504, Title II of the ADA, hostile environment claims*:

Longmeadow also seeks dismissal of Parent’s claims involving Section 504, Title II of the ADA and allegations involving creation of a hostile environment, arguing the limited authority of the BSEA to resolve such disputes.

Pursuant to the IDEA[[27]](#footnote-27), M.G.L. c. 71B and accompanying regulations, the BSEA has limited authority, that is, to resolve special education disputes between and among parents, school districts, certain Massachusetts state agencies[[28]](#footnote-28) and private schools “concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities.” In Massachusetts, the jurisdictional authority of BSEA hearing officers further extends to requests for hearings involving denials of free appropriate public education guaranteed under section 504 of the rehabilitation act of 1973[[29]](#footnote-29); 603 CMR 28.08(3)(a).

Here, claims raised by Parent regarding Section 504, Title II of the ADA and hostile environment fall outside the limited jurisdiction of the BSEA. Parent’s hostile environment claims appear to be related to concerns over a speculative systemic claim, rather than a FAPE issue impacting Student. While the BSEA may conceivably have jurisdiction over a hostile environment claim that is directly related to a FAPE claim[[30]](#footnote-30), for a specific student during periods of time involving IEPs subject to review, systemic claims fall outside the jurisdictional authority of the BSEA. Since Parent’s claims regarding hostile environment are not connected to any FAPE denial claim with regard to Student herein, her claims in this regard fall outside the jurisdiction of the BSEA.[[31]](#footnote-31)

As such, Parent’s claims involving retaliation under Section 504, Title II of the ADA and allegations involving creation of a hostile environment are **DISMISSED**. The District’s Motion to this effect is **ALLOWED**.

*Requested Relief*:

As noted earlier in this Ruling, Parent’s Hearing Request seeks: reimbursement and prospective funding for Student’s unilateral placement at the Flex School- Cloud Campus; assistive technology (in an amount not to exceed $1,500); $5,480 reimbursement for Student’s 2025 independent evaluation; Flex School- Cloud Campus to be determined Student’s stay-put placement; and that Student be allowed to participate in extracurricular activities through Longmeadow until he graduates from high school.

Parent’s Amended Hearing Request acknowledges that Flex School- Cloud Campus is not approved as a special education program by the Massachusetts Department of Elementary Education. While an unapproved program may be subject to review for retroactive reimbursement as an equitable remedy in instances where the parent demonstrates that the program offered by the district failed to offer a FAPE[[32]](#footnote-32), such, is not the case regarding funding for prospective placement in unapproved programs. In the latter situation, if the parent demonstrates that the school district’s program is inappropriate, the hearing officer may order the District to locate or create a program with specific characteristics as required by the student to make effective progress and receive FAPE.

 Several BSEA rulings, which analysis I hereby adopt and incorporate by reference, have addressed this issue, finding that a BSEA hearing officer may not order prospective placement at an unapproved school, especially where appropriate, approved private programs may exist.[[33]](#footnote-33)

As explained by Hearing Officer Kantor Nir in *In Re: Student v. Arlington Public Schools, Ruling on Arlington Public Schools’ (Partial) Motion to Dismiss*, BSEA #2503415 (9/30/2024),

Under 20 U.S.C. § 1401(a)(18)(D), the ‘free and appropriate public education’ required under IDEA must meet the standards of the State educational agency; this means that “the universe of private programs that a state may consider is at least partly defined by state law.”[[34]](#footnote-34) 603 CMR 28.06 (3)(d) states that the “school district shall, in all circumstances, first seek to place a student in a program approved by the Department pursuant to the requirements of 603 CMR 28.09….When an approved program is available to provide the services on the IEP, the district shall make such placement in the approved program in preference to any program not approved by the Department.” As such, the Hearing Officer cannot order a school district to fund an unapproved program except “in cases where a parent unilaterally places a child in [an unapproved] program because the school has not offered an appropriate IEP.”[[35]](#footnote-35) [Internal quotations partially omitted].

Taking as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in [Parents’] favor”[[36]](#footnote-36), I cannot grant the prospective relief desired by Parent. Therefore, while Parent’s reimbursement claim for the 2024-2025 school year may proceed, the BSEA cannot prospectively order Longmeadow to fund an unapproved program and thus, Parent’s prospective request for funding of Flex School- Cloud Campus for the 2025-2026 and 2026-2027 school years is **DISMISSED with Prejudice**.

Parent’s claims regarding Student’s need for assistive technology, reimbursement for the 2025 independent evaluation and request for Student’s participation in extracurricular activities through the end of High School survive the District’s Motion to Dismiss and Motion for Summary Judgment, and she may proceed to hearing on same.

1. **Parent’s 6/24/25 Specific Requests**:

Parent’s specific request to amend and refile interrogatories and document requests, is **GRANTED in PART**. Parent may amend and refile her discovery requests, but she shall adhere to the maximum interrogatories allowable per Rule V.B. of the *Hearing Rules for Special Education Appeals,* and consider the totality of this Ruling when making her requests. Parent’s request for reconsideration of Interrogatory #26, involving global complaints by other students regarding a specific teacher is **DENIED**.

1. **Motion To Recuse**:

A Motion for recusal requires the Hearing Officer to engage in a self-examination process taking seriously the allegations made by the moving party, herein, Parent, so as to protect the trust and confidence of the participants in quasi-judicial proceedings at the BSEA.

To this end, the Hearing Officer being challenged must establish that she possesses the qualifications and expertise to conduct the proceeding before her and ensure that she is able to conduct the hearing in a fair and impartial manner, basing her determinations on the evidentiary record and the applicable law. Moreover, in providing due process the Hearing Officer must ensure that the hearing is efficient and responsive to the interests of the parties. Thus, the recusal process require the Hearing Officer to: 1) examine her own professional qualifications to hear the controversies before her; 2) examine her own conscience regarding any subjective biases she may have about the parties or the subject matter; 3) be aware of any objective bars in the case before her, such as potential relationship-based bias, or financial interest in the outcome of the case or residence within the school district; and, 4) 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, 21 MSER 135 (Scannell, June 30, 2015) quoting *In Re: Brockton Public Schools*, 16 MSER 367 (2010); *In Re: Duxbury Public Schools*, 14 MSER 363 (2008); *In Re: Marblehead Public Schools*, 8 MSER 84 (2002). With this guidance I engage in the process described above:

*Professional Qualifications:*[[37]](#footnote-37)

This Hearing Officer is a member of the Massachusetts Bar in good standing, who practiced as an attorney in the Commonwealth of Massachusetts for five years before accepting a position as a Hearing Officer at the BSEA in 1993. Given the Hearing Officer’s professional qualifications, which are not challenged in Parents’ Motion, recusal on this basis is not warranted. See *In Re: Ludlow Public Schools, Ruling on Motion for Recusal*, BSEA #1509319, 21 MSER 135 (Scannell, June 30, 2015).”

*Subjective Biases:*

In examining the record and my own conscience to determine whether I am truly capable of conducting an unbiased, impartial due process proceeding, I find that I do not have any previously acquired or extra-administrative knowledge of the matter, nor impermissible biases or pre-judgments in this case. I find that I am capable of fairly presiding over this matter without prejudice to either party and that I can render a decision based solely on the evidence presented at hearing and the applicable law.

*Objective Biases:*

Objective factors that may warrant recusal include: 1) any financial interest the hearing officer may have in the outcome of the matter that might reasonably compromise her ability to render a fair decision; or, 2) any personal or professional connection the hearing officer may have with a party.

In the instant case, Parent alleges an improper bias, asserting a professional connection between this Hearing Officer and Longmeadow’s attorney, this based on the fact that both participated in a Massachusetts Continuing Legal Education (MCLE) program on May 15, 2025 (involving Mock trial of a BSEA hearing) while the current matter was pending.

The undersigned Hearing Officer participated in this presentation alongside three attorneys who frequently appear before the BSEA on behalf of parents and school districts. Nothing discussed at any point during preparation or during the presentation had any bearing whatsoever on the instant matter.[[38]](#footnote-38) At no time was this or any other active case discussed between or among any of the participants, and the facts of the case presented during the mock hearing were created by the attorneys without this Hearing Officer’s input. The Hearing Officer received no financial remuneration for her participation. To exclude a BSEA hearing officer from presiding over a case on the basis of that hearing officer’s participation at an MCLE, Federation for Children with Special Needs, law school class or other special education program would have a chilling effect on continuing legal education in the field. Collaboration by and among attorneys from both sides of the bar and hearing officers, where other personal, familial, professional or financial relationships do not exist, does not constitute grounds for recusal.[[39]](#footnote-39)

To my knowledge, no current or previous familial, personal, financial or professional relationship exists between this Hearing Officer and Longmeadow’s attorney beyond the professional, common courtesy offered to any and all parties appearing before me.

 I therefore find no objective bar to continuing as a Hearing Officer in this matter.

*Appearance Factors:*

 A “hearing officer must also examine whether her impartiality might reasonably be questioned by the participants or the general public. To grant recusal, the alleged hearing officer’s bias, prejudice, conduct or ties must arise from some extrajudicial source. In this context, objections to prior rulings, orders or instructions in the current matter that may be unsatisfactory to the party seeking recusal do not constitute a proper foundation for disqualification. 28 U.S.C. § 455; *Boston’s Children First*, 244 F.3d164 (1st Cir. 2001); *DeMoulas v. Demoulas Super Markets*, 424 Mass. 501 (1997); *Commonwealth v. Gogan*, 389 Mass. 255 (1983).”

Parent raises allegations of improper conduct insofar as the Hearing Officer suggested that dispositive motions be filed and accepting a late filing of a motion for a protective order that impacted Parent’s ability to obtain discovery.

A Hearing Officer is responsible for ensuring the orderly presentation of the evidence at hearing. To do so, the hearing officer may assist with clarification of issues, remedies, discovery, areas of agreement and disagreement between the parties and other matters prior to hearing. These may be addressed during conference calls or pre-hearing conferences with both parties, motions, or as was the case here, openly in a ruling issued on June 17, 2025. In that Ruling, the Hearing Officer informed the Parties that prior to resolving some of the discovery disputes, the scope of the hearing had to be defined, e.g. jurisdictional and statute of limitations issues. Without first determining the scope and viable claims through, e.g. a motion for summary judgment or motion to dismiss, the hearing would be unnecessarily long, inefficient, confusing and riddled with irrelevant and unreliable information. I note that the same Ruling to which Parent objects clarified the issues and remedies contained in Parent’s Amended Hearing Request, and offered her an opportunity to correct the lists if she disagreed; she did not. The Supreme Court stated in *Liteky v. U.S*., 510 U.S. 540, 558 (1994) that,

judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. In and of themselves… they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required when no extrajudicial source is involved.[[40]](#footnote-40)

Parent’s second concern involves the District’s late filing of a motion for protective order, mentioned during a conference call and received by Parent but not the BSEA until after Parent’s response to the motion was received. The Hearing Officer contacted the Parties and both Parent and the District forwarded the District’s motion to the Hearing Officer. Parent was not prejudiced by the BSEA not receiving the motion at the same time as she did, as Parent’s response was considered when the Ruling was issued. Given the numerous issues with Parent’s initial discovery requests, following issuance of the Ruling, Parent requested and has been granted permission to refile her discovery requests anew.

Neither of the Appearance allegations raised by Parent constitutes a proper foundation for disqualification, as no reasonable member of the public could point to a factor or circumstance to doubt the Hearing Officer’s impartiality in this case for the reasons raised by Parent. Similarly, any parental challenge to the appearance of impartiality as a result of this Hearing Officer’s participation at the MCLE program discussed *supra* also fails as foundation for recusal.[[41]](#footnote-41)

In *In re United States*, 158 F 3d 26, 34 (1st Cir. 1998), the Court explained the “high threshold” when considering disqualification, noting that said determinations must seek to promote public confidence in judicial proceedings while also preventing parties from disqualifying an impartial judge so as to secure a preferable one.[[42]](#footnote-42) A determination regarding recusal falls within the discretion of the judge or in this case, the hearing officer, presiding over the particular matter, and if later challenged on appeal, only if abuse of discretion is demonstrated may denials of such motions be reversed. *U.S. v. Bremers*, 195 F.3d. 221,226 (5th Cir. 1999).[[43]](#footnote-43) Having found that Parent’s allegations against this Hearing Officer’s professional qualifications, subjective bias, objective bars, or appearance of impartiality are unfounded, I find no reasonable basis for granting the request for recusal.

Parent’s Motion for recusal of this Hearing Officer, is **DENIED**. Parent’sMotion to strike the Ruling for Protective Order is **ALLOWED in PART**, consistent with this Ruling, and her request that all dispositive motions be stayed pending resolution of discovery is **DENIED** for the reasons explained in the Ruling issued on June 17, 2025.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

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Rosa I. Figueroa

Dated: September 3, 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 for review in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts. 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. Via Order issued on June 5, 2025, the matter is scheduled to proceed to Hearing on October 1 and 2, 2025. [↑](#footnote-ref-1)
2. It is unclear whether this Motion was forwarded to the opposing party. [↑](#footnote-ref-2)
3. The facts delineated in this section are taken as true for purposes of this Ruling only. [↑](#footnote-ref-3)
4. The N1 states that Student’s “personal goal is to use technology as a resource and not be dependent on it. The school provides [Student] with technology for assignments and assessments for written expression. [Student] chooses to use a personal device with a personally purchased application to increase the ease of work completion. The school-based team does not agree that this is necessary to access the curriculum, nor did the school provide this device and application for [Student]. [Student] has been successful using school- based technology for written expression as well as handwriting on assessments less than 5 sentences or with mathematical components as evidenced by the legibility of his handwriting and current performance on assessments in his content courses. The limitations of having [Student] use a device that allows him to take pictures of an assessment prohibit him from accessing the least restrictive environment for assessments. [Student] is capable of taking assessments in the general education setting without this technology, and therefore the team is proposing that it only be used for written expression greater than 5 sentences.” (SE-5). [↑](#footnote-ref-4)
5. The evaluation would include “the Feifer Assessment of Writing, which is an assessment of his grapho- motor skills and executive functioning skills as it pertains to written expression, and also provides a dyslexic index score. The Team is also proposing a cognitive evaluation, social pragmatic evaluation, and occupational therapy evaluation in the areas of graphomotor skills to update students learning profile”. An educational assessment would also be completed. [↑](#footnote-ref-5)
6. Longmeadow’s Special Education Director. [↑](#footnote-ref-6)
7. “Mr. R[osemond] verified that [Student] was offered to switch his ELA class in early April, when I was investigating the allegation of bullying. Specifically, he said [Student] was offered to switch into Mr. Staples A block class and that [Student] was adamant he didn't want to switch. Mr. R remembers him saying “Hell, no” during their conversation. Mr. R also believes student was offered to switch teachers during an IEP meeting by Ms. Keenan back in the late fall of 2023.” You didn’t indicate who you are quoting here (SE-8). [↑](#footnote-ref-7)
8. According to Mr. Rosemond, Student had shared that he did not complete work outside school, that Student had been triggered in May 2024 when he was overwhelmed by an AP Computer Science exam, MCAS and the ELA workload. Mr. Rosemond also offered explanation for a mediation and apology between Student and Mrs. Fedorov over a disrespectful document Student had created in anger (SE-8). [↑](#footnote-ref-8)
9. 801 Code Mass Regs 1.01. [↑](#footnote-ref-9)
10. See *Tomaselli v. Beaulieu*, 967 F. Supp 2d 423 (2013). [↑](#footnote-ref-10)
11. Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008) (quotingBell Atl. Corp. v. Twombly*,* 550 U.S. 544, 557 (2007)). [↑](#footnote-ref-11)
12. Blank v. Chelmsford Ob/Gyn.C*.,* 420 Mass. 404, 407 (1995). [↑](#footnote-ref-12)
13. *Tomaselli v. Beaulieu*, No. 08-CV-10666-PBS, 2010WL2105347, at 3\* (D. Mass. May 7, 2010); *Gargano v. Liberty Intern. Underwriters*, Inc. 572 F. 3d 45, 49 (1st Cir. 2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559, 127 S.Ct. 1955, 1967(2007)); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009) (discussing the plausibility standard). [↑](#footnote-ref-13)
14. *Ashcroft*, 556 U.S. at 678, 129 S.Ct. at 1949-50 (citing *Twombly*, 550 U.S. at 555, 127 S.Ct. at 1955). [↑](#footnote-ref-14)
15. Golchin v. Liberty Mut. Ins. Co.*,* 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). [↑](#footnote-ref-15)
16. 20 U.S.C. §1400 et seq.; M.G.L. c. 71B. [↑](#footnote-ref-16)
17. 29 U.S.C. §479. [↑](#footnote-ref-17)
18. See *Carey v. New England Organ Bank*, 446 Mass. 270, 278 (2006); *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986). [↑](#footnote-ref-18)
19. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 251-2 (1986). [↑](#footnote-ref-19)
20. See *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 251-2 (1986). [↑](#footnote-ref-20)
21. *Adickes v. S.H. Kress & Co*., 389 U.S. 144, 157 (1970).; See also, *Ng Bros. Constr., Inc. v. Cranney*, 436 Mass. 638, 644 (2002), citing *Pederson v. Time, Inc*., 404 Mass. 14, 17 (1989); *Kourouvacilis v. Gen. Motors Corp*., 410 Mass 706, 716 (1991) (requiring that the moving party demonstrate the absence of a triable issue and that the record entitles the moving party to judgment as a matter of law.) [↑](#footnote-ref-21)
22. *Anderson*, 477 U.S. 242 at 250. [↑](#footnote-ref-22)
23. *Id*. at 249. [↑](#footnote-ref-23)
24. *McCarty v. Northwest Airlines*, Inc., 56 F.3d 313, 315 (1st Cir. 1995). See also, *Jupin v. Kask*, 447 Mass. 141, 143 (2006), citing *Coveney v. President & Trustees of the College of the Holy Cross*, 388 Mass. 16, 17 (1983). [↑](#footnote-ref-24)
25. 20 USC 1415(b)(6)(B); 34 CFR 300.507(a)(2). [↑](#footnote-ref-25)
26. Parent is reminded that at Hearing she carries the burden of persuasion. [↑](#footnote-ref-26)
27. 20 U.S.C. 1415(b)(6); 34 CFR 300.507(a)(1). [↑](#footnote-ref-27)
28. Including the Department of Children and Families, the Department of Developmental Disabilities, the Department of Mental Health, the Department of Public Health, or other state agency or programs “in accordance with the rules, regulations and policies of the respective agencies” 603 CMR 28.08(3). [↑](#footnote-ref-28)
29. 34 CFR §§104.31-104.39. [↑](#footnote-ref-29)
30. See *Holyoke Public Schools*, 22 MSER 174 (2016); *Norton Public Schools*, 22 MSER 169 (2016); *Springfield* *Public Schools and Xylia*, 18 MSER 373 (2012). [↑](#footnote-ref-30)
31. *Fry v. Napoleon Community Schools*, 137 S. Ct. 743 (2017). [↑](#footnote-ref-31)
32. See 34 CFR 300.148 (c); see also *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass*., 471 U.S. 359, 370 (1985), and *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 31 (1st Cir. 2006). [↑](#footnote-ref-32)
33. See *In Re: Student v. Arlington Public Schools, Ruling on Arlington Public Schools’ (Partial) Motion to Dismiss*, BSEA #2503415 (Kantor Nir, 9/30/2024). See also *PJ & Arlington Public Schools, Ruling on District’s Motion to Dismiss*, BSEA #2503415 (Mitchell, 10/21/24). [↑](#footnote-ref-33)
34. *T.R. v. Kingwood Twp. Bd. of Educ.,* 205 F.3d 572, 580 (3d Cir. 2000); see *Antkowiak v. Ambach,* 838 F.2d 635, 638 (2d Cir.1988) (rejecting placement in an unapproved school). [↑](#footnote-ref-34)
35. See *Manchester-Essex Reg'l Sch. Dist. Sch. Comm.,* 490 F. Supp. 2d at 54. [↑](#footnote-ref-35)
36. *Blank v. Chelmsford Ob/Gyn, P.C*., 420 Mass. 404, 407 (1995). [↑](#footnote-ref-36)
37. Parent does not challenge the Hearing Officer’s professional qualifications [↑](#footnote-ref-37)
38. *In re Aguinda*, 241 F.3d 194 (2001)(a judge challenged on the basis of appearance of impropriety following attendance to an expense paid seminar denied disqualification as none of his private conversations or seminar discussions had bearing on the case over which he presided). [↑](#footnote-ref-38)
39. *United States v. Sampson*, 148 F. Supp. 3d 75 (D. Mass. 2015).(a judge in a capital case denied disqualification when his impartiality was questioned because he moderated a panel that included a potential expert witness in the retrial to determine sentencing). [↑](#footnote-ref-39)
40. See *In Re: Bridget Brown Parson*, No. 21-30982 (Bankr. N.D. Tex. September 15, 2021)(after considering a motion for recusal presented by a pro-se litigant, the bankruptcy judge found no basis for recusal and drawing similarities to *In re Pease*, No. 09-54754, 210 WL 1849919 (Bankr. W.D. Tex. May 5, 2010), saw it as a “trial tactic, or as a substitute for obtaining appellate review of adverse decisions”). [↑](#footnote-ref-40)
41. *In re Wilborn*, 401 B.R. 848 (2/17/2009) (a judge’s statements and slides during a continuing legal education presentation, providing the basis for prior decisions, did not constitute basis for the judge’s recusal). [↑](#footnote-ref-41)
42. See In re Bulger, 710 F.3d. 42, 47 (1st Cir. 2013). [↑](#footnote-ref-42)
43. See also, *Wilborn v. Wells Fargo Bank*, N.A., 401 B.R. 848 (Bankr. S.D. Tex. 2009) citing *U.S. v. Mizell*, 88 F.3d. 288, 299 (5th Cir. 1996) (noting a judge’s broad discretion when determining disqualification). [↑](#footnote-ref-43)