

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals
Bureau of Special Education Appeals

In Re: Belinda¹

&

BSEA# 13-06761

Norton Public Schools

ORDER

This Order is written to address the issue of Parents' representation.

Pertinent Chronology²

- 1) On April 5, 2013 lay advocate Tami Joia requested a BSEA Hearing on behalf of the Parents. Thereafter she participated in BSEA conference calls and submitted Motions for consideration.
- 2) On May 31, 2013 the BSEA scheduled a Prehearing Conference for July 16, 2013. That Notice Included the following language: "All outstanding Motions will be addressed at the Prehearing Conference."
- 3) On June 20, 2013 Attorney Michael Turner entered an appearance. His notice of appearance Provided: "All future communications will be through my office."
- 4) On July 9, 2013 the Parents, through their Attorney, reported that the majority of disputed issues had been resolved; requested that the July 16,2013 Prehearing Conference be

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

² All references found in the Administrative Record

postponed; and proposed submitting a status report thirty days in the future. The BSEA granted the postponement request and ordered submission of status reports by August 12, 2013. The Parents did not submit a status report.

5) On September 12, 2013 the BSEA sent a thirty day show cause order to the Parties.

6) At Attorney Turner's request, a conference call was held on September 26, 2013. The Parties reported the matter was largely settled with one remaining compensatory issue for resolution at Hearing. The Parties selected, and the BSEA ordered, November 21, 2013 as the Hearing date.

7) On October 2, 2013 Ms. Joia submitted documents entitled: a) Motion for Sanctions for Continued Violations of Noncompliance of IEP; b) Motion for Production of Documents; c) Motion for Emergency Conference Call; Written Orders of Clarification re: Pat Cosgrove; To Enforce Implementation of Current IEP.

There was no endorsement of these documents by Attorney Turner, nor any indication that he was aware of their submission to the BSEA.

8) On October 7, 2013 Attorney Turner withdrew from Parent representation. He wrote: "Now comes Michael W. Turner who does inform the Hearing Officer that he does hereby withdraw his name as Attorney of Record in the above captioned case. All future communication should be with Ms. Tami Joia."

9) On October 9, 2013 the Hearing Officer wrote to the parents requesting confirmation or clarification of the identity of their representative. The Parents have not responded to date.

10) On October 9, 2013 the Hearing Officer wrote to Ms. Joia confirming receipt of the document she sent on October 2nd, 2013. The letter stated: "At that time the Parents had an attorney of record. There was no indication that the Parents' attorney endorsed the documents you submitted. Therefore the BSEA may not consider your requests." The BSEA asked Ms. Joia to provide documentation of the Parents' consent to representation. No such documentation has been received to date.

11) On October 15, 2013 Ms. Joia submitted a Motion to Recuse³.

³ While neither the Parents nor Ms. Joia has responded to the BSEA information request to date, Ms. Joia has submitted a ten page "Motion to Recuse", acknowledging receipt of the BSEA request. In that submission she indicated an intent to seek a court's determination of the validity of the Hearing Officer's request regarding representative information. This Order is provided to aid that process.

Discussion

One question presented by these facts is whether, upon the appearance of new counsel, the prior representation arrangement is held in abeyance to be resumed at some future time or is considered by the BSEA to be terminated. Related questions are whether the BSEA may acknowledge simultaneous dual representation by a lay advocate and an attorney, particularly where, as here, the work of the two representatives is not necessarily harmonious; whether submissions entitled Motions that are submitted by someone other than counsel of record have legal or procedural significance at the time of submission; and whether such submissions are automatically accorded some procedural significance at some other time if counsel of record withdraws from representation. These are all interesting questions and merit thoughtful consideration. For the purpose of this BSEA proceeding, and most, however, the simplest and quickest way to ascertain the Parents' wishes is to ask them directly. The purpose of such a request is: (1) to ensure that the BSEA does not disclose sensitive personal and legal information to legal strangers to the administrative action; (2) to ensure that the Parents have in fact authorized an individual or group to speak on their behalf; (3) to ensure prompt consideration of Parent authorized submissions; and (4) to reduce confusion and promote administrative efficiency. Asking a Parent to clearly designate a representative, or a representative to confirm representation status, in writing is neither extraordinary nor onerous.

In light of the Parents' affirmative refusal to respond to the BSEA's information request in the instant case, it is reasonable for the Hearing Officer to rely on the most recent instruction from their last designated representative. As Attorney Turner's notice of withdrawal explicitly indicated that BSEA communications regarding this appeal should be directed to Ms. Joia, the BSEA will accept that successor designation until, and unless, the Parents otherwise designate or Ms. Joia withdraws in writing. Since October 7, 2013 Ms. Joia has submitted a Motion for Recusal. That Motion, and the School's Opposition, will be considered forthwith.

The issue of whether submissions the BSEA received from Ms. Joia while Attorney Turner was the attorney of record, and which were not endorsed by him, may now be considered, is more problematic. After careful consideration I find that absent the endorsement of the attorney of record at the time of original submission, documents Ms. Joia submitted prior to October 7, 2013 cannot be automatically considered by the BSEA. Ms. Joia may however request that the BSEA now take up any Motions that are still pertinent.

ORDER

This matter is currently scheduled for Hearing on November 21, 2013. All Prehearing Motions must be filed in time to be addressed before November 7, 2013. The Parties must submit a final statement of issues for resolution no later than November 7, 2013. In addition, the Parties must exchange all proposed documents and witness lists, and submit them to the Hearing Officer, no later than November 14, 2013. Therefore time is of the essence.

The Parents are currently represented by lay advocate Tami Joia. Should they wish alternate representation, or no representation at all, the Parents shall notify the BSEA in writing.

By the Hearing Officer

Lindsay Byrne
November 1, 2013