

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

In Re: Student v.
Hampden-Wilbraham School District

BSEA # 1403110

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.

Parents requested a Hearing in the above-referenced matter on October 21, 2013. Following a conference call on November 13, 2013 and a postponement request by the Parties during the telephone conference call, the matter was scheduled to proceed by agreement of the parties on December 5, 2013. An Order setting the Hearing date was issued on November 5, 2013. The Hearing was held on December 5, 2013, at the Offices of Catuogno Court Reporting, 445 Main St., Worcester, MA, before Hearing Officer Rosa I. Figueroa.

Those present for all or part of the proceeding were:

Student's Father	
Student's Mother	
Peter Smith, Esq.	Attorney for Hampden-Wilbraham School District
Debra L. Tobias	Director of Student Services for Hampden-Wilbraham School District
Michelle Noel	Director of Contracting, Brattleboro Retreat
Darlene Coppola	Catuogno Court Reporter

The official record of the hearing consists of documents submitted by Parents and marked as PE-1 through PE-9 and sections I, II and III marked as PSEC-I through PSEC-III, and Hampden-Wilbraham School District (Hampden) marked as exhibits SE-1 through SE-10¹. The Parties opted not to submit written closing arguments. The record closed on December 5, 2012.

HEARING ISSUE:

Whether Hampden is obligated to pay the balance owed to Brattleboro Retreat for educational services rendered by the Meadows School.

¹ Upon reviewing the record, I could not find any document marked as SE-9. The document labeled SE-10 should have been marked as SE-9.

POSITIONS OF THE PARTIES:

Parents' Position:

Parents argue that Hampden should be responsible for all of the costs associated with Student's education while she was at Brattleboro Retreat in Vermont and seek an Order from the BSEA that Hampden be mandated to cover the balance Brattleboro is charging them.

Hampden's Position:

Hampden states that it paid what it was responsible to pay under the contract between Hampden, Parents and Brattleboro. Said amount according to Hampden is in accordance with the Massachusetts rate for home-hospital tutorial by certified teachers, and therefore, it is not responsible to cover the additional \$3,025.00 alleged by Parents.

FINDINGS OF FACT:

1. Student is a fourteen and a half year old resident of Hampden who in December 2012, was attending eighth grade as a regular education student at Hampden-Wilbraham Middle School. Student performed well academically and did not present any special education needs at that time. She resided with her parents in district (Parent).
2. On or about December 19, 2012, Student experienced an emotional breakdown while attending school. She was brought to a separate room with the school adjustment counselor and Parents and the Behavioral Health Network (BHN) were notified (Parent).
3. BHN workers recommended hospitalization and when Student expressed her desire to be hospitalized Parents agreed. Student was hospitalized at Brattleboro Retreat (Brattleboro) in Brattleboro, Vermont, on December 19, 2012 (Parent).
4. Parents signed a Financial Agreement with Brattleboro Retreat on December 19, 2012 agreeing to pay all of the charges incurred or any unpaid balance remaining after insurance for Student's treatment (PE-7).
5. When Student's condition appeared to become stable on January 17, 2013, she was transferred to Brattleboro's adolescent residential program, that is, the Linden House program. Adolescents at the Linden House continue to receive individual and family therapy (PSEC-III). However, on January 25, 2013, Student had to be transferred back to Brattleboro for further hospitalization. She returned to Linden House on February 1, 2013.
6. Parents filed an application with the Department of Mental Health on January 25, 2013. On March 8, 2013, Parents were informed that Student had met the "clinical criteria for Residential and Case Management services" (PSEC-III).

7. On January 25, 2013, Parents signed an authorization for disclosure of Student's records allowing Brattleboro Retreat/Meadows Educational Center and Hampden-Wilbraham to share only financial information regarding funding for Student's education (SE-7). Parents did not consent to releases of information regarding Student's emotional or psychological status until late March 2013 (SE-8).
8. Student remained at the Linden House between February 1 and February 16 when she again returned to Brattleboro Hospital through February 25, 2013. Thereafter, she was able to remain stable at the Linden House through May 7, 2013, without requiring further inpatient hospitalization (PSEC-III; Parent).
9. During her second stay at Linden House, Student requested that Parents bring her school work and textbooks as she did not wish to fall behind her peers academically. When students are stable and able to access their education, they resume their education at the Meadows Educational Center (Meadows) (PE-1; Parent). The educational portion of the program for children at Brattleboro is also known as the Bridges Program (PE-6; Parent).
10. Meadows is an independent school approved by the Vermont Department of Education. It is an integral part of Brattleboro Retreat where Vermont certified teachers provide classroom instruction to school-age residents of Brattleboro and/or the Linden House through the Bridges Program. In the past several years, Hampden has contracted with the Meadows School to provide instruction and/ or tutorials to children hospitalized at Brattleboro and/or the Linden House (PE-1; Tobias).
11. At Parents' request, Hampden-Wilbraham Middle School's principal and adjustment counselor provided Meadows with Hampden's curriculum (PSEC-III).
12. On February 5, 2013, Parents signed a Contract for Educational Services [for the] School Year 2012-2013, with Brattleboro Retreat. Debra Tobias, Director of Student Services at Hampden-Wilbraham also signed the contract on February 13, 2013. Under this contract the pertinent section checked by Brattleboro (addressing educational services to Student) offered Student residential education which would be billed at \$210.00 per day. This section also contained a clause² labeled "Other" which stated

The school will be responsible for tutorial at \$30.00 per hour (\$60.00 max[imum] per day), 10 hours per week max[imum] (\$300.00). Balance will be billed to parent(s)/ guardian (PE-6; SE-3; SE-6).

² A separate clause indicating that the agreement was made between Wilbraham Middle School and Brattleboro Retreat was not checked (PE-6).

Services to Student under this contract would be initiated on February 1, 2013. The Contract also contained a clause (5) stating

The Brattleboro Retreat shall charge, and THE SCHOOL [Hampden-Wilbraham] shall pay the indicated rate for the program per day for the indicated services. Payment will be made to The Brattleboro Retreat on a monthly basis, within fifteen (15) days after the delivery of the invoice indicating services. The invoice shall indicate the number of school days within the month, at the contracted rate and the total amount due (PE-6; SE-3; SE-6).

13. Hampden originally agreed to pay \$30.00 per hour and up to \$60.00 per day maximum for home-hospital IEP tutorial services. However, upon receiving confirmation that Student's teacher/tutor at Meadows was properly certified by Vermont, it agreed to increase the amount to \$105.00 per day, \$525.00 per week for services rendered between February 1, 2013 through May 6, 2013. According to Hampden, the district's standard payment to certified tutors is \$525.00 per week. The total amount paid by Hampden to Brattleboro Retreat/Meadows was \$5,775.00 (SE-2; SE-4; Tobias, Noel).
14. Email communication between Parent and Brattleboro staff between March 8 and March 28, 2013 indicate that Parent was in communication with Hampden regarding DMH's recommendation to place Student at a Cutchins Program facility. The email from Jaime Knox, MSW, Residential Therapist at Brattleboro Retreat to Parents, dated March 28, 2013 notes Ms. Tobias' (Hampden-Wilbraham) request to send Hampden personnel to conduct IEP testing at Brattleboro (PE-2). When the Team met later in April 2013, it relied on information provided by personnel at Brattleboro including Ms. Knox (Tobias).
15. On March 22, 2013, Parents authorized release of Student's psychological, educational, and evaluative information as well as Student's emotional, behavioral and school adjustment information to Hampden-Wilbraham (SE-8). This was the first time that Hampden would receive substantive information regarding Student's educational, emotional and psychological information (Tobias). Parents explained that due to negative past experience regarding release of information protected by HIPAA they were not comfortable releasing personal information regarding Student (Parents).
16. On or about April 8, 2013, Ms. Knox notified other Brattleboro personnel and Student that Karen Shaw, Ph.D., school psychologist in Hampden, had reviewed psychological testing conducted at Brattleboro and had indicated that Hampden would be drafting an IEP for Student based on a social/ emotional disability without need for further testing by Hampden (PE-3).

17. Student's Team met in Hampden on April 24, 2013. Student was found eligible to receive special education services due to an emotional impairment. The Team recommended an extended evaluation. An IEP covering the period from May 7, 2013 and September 27, 2014 was drafted offering Student placement at New Directions School starting in May 2013. It was further agreed that Dr. Shaw would complete Student's psychological assessment when Student was at the New Directions School. On April 24, 2013, Parents accepted this IEP and consented to the placement (SE-10).
18. In June 2013, Student was transferred to the Northampton Center for Children and Families, a Cutchins Program. At this residential program, Student received her educational services at the New Directions School (SE-1; PE-5).
19. Brattleboro Retreat has continued to bill Parents \$3,025.00³, the balance of the bill for educational services provided to Student at Meadows not covered by Hampden (PE-4).
20. On July 29, 2013, Parents wrote to Ms. Tobias. Parents requested that Hampden cover the balance of Student's educational services that Meadows charged them. According to Parents, Student should have been found eligible to receive special education services at the time she was first available to access educational services while she was hospitalized and Hampden should have been fully responsible to fund her education starting in January 2013. Parents further argued that Meadows was to Brattleboro Retreat much the same as the New Directions School was to the Cutchins program, and since Hampden had agreed to fund said private day school, it should also fully fund Meadows (PE-5; SE-1).
21. On August 28, 2013 Hampden communicated with Jen Rathbun in the billing office of Brattleboro Retreat, who confirmed that Hampden's obligation for Student had been covered in full. Ms. Rathbun also explained that the bill sent to Parents reflected the "parent portion of the residential education program, and [was] the parents' responsibility to pay" (SE-2).
22. On September 6, 2013 Hampden's Attorney wrote to Parents denying their request for Hampden to cover the outstanding bill by Brattleboro Retreat. The letter explained that payment for the educational portion of a temporary hospital placement that lasted over 14 days was nondiscretionary to the district and stating that Hampden had totally fulfilled its financial responsibility under the contract (SE-2).
23. Dr. Shaw conducted a psycho-educational evaluation of Student in September 2013 (PE-8). Thereafter, the Team met on October 3, 2013 to determine Student's eligibility to receive special education. Student was found eligible due to a social/emotional disability and was offered participation in a private day placement at

³ The amount reflected in the original invoice forwarded to Parents was \$3,205.00 however Parents explained that this amount had later been reduced by Brattleboro/ Meadows to \$3,025.00 (SE-1; Parent).

Cutchins/New Directions, for the period between October 3, 2013 and October 2, 2014. On November 11, 2013 Parents accepted this IEP and placement (PE-9). By Parental report, Student is doing well at this placement.

24. On or about October 21, 2013, Parents requested a Hearing before the BSEA seeking an Order that Hampden-Wilbraham pay the outstanding balance charged to Parents by Meadows for Student's education at that location (SE-5).

CONCLUSIONS OF LAW:

Student's current entitlement to special education services is not disputed. She is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act⁴ (IDEA) and the state special education statute⁵ and as such is entitled to a free, appropriate public education (FAPE)⁶ and has a right to all the procedural safeguards guaranteed under the IDEA and Massachusetts special education law and the regulations promulgated under federal and state laws.

The sole issue between the Parties is whether Hampden is responsible to pay the \$3,025.00 balance charged by Brattleboro to Parents. As the party seeking relief, Parents carry the burden of persuasion pursuant to *Schaffer v. Weast*, 126 S.Ct. 528 (2005)⁷, and must prove their case by a preponderance of the evidence. Also, pursuant to *Schaffer*, if the evidence is closely balanced, Parents will lose. *Id.*

While this case evokes a great deal of sympathy for Parents' situation, I can find nothing in the law or in Hampden's actions to support ordering Hampden to pay the balance of the Brattleboro bill to Parents, because, for the reasons explained below, I find that Student was a regular education student during the time in question and the BSEA has no jurisdiction over regular education disputes.

Hampden is correct that under the Massachusetts Special Education Regulations any student (albeit a regular education or special education student) who is out of school for more than fourteen days, is entitled to home-hospital educational services. 603 CMR 28.03(3)(c) provides

Educational services in home or hospital. Upon receipt of a Physician's written order verifying that any student enrolled in a public school or placed by the public school in a private setting must remain at home or in a hospital on a day or overnight basis, or any combination of both, for medical reasons and for a period of not less than 14 school days in any school year, the principal shall arrange for provision of educational services in the home or

⁴ 20 USC 1400 *et seq.*

⁵ MGL c. 71B.

⁶ MGL c. 71B, ss. 1 (definition of FAPE), 2, 3.

⁷ *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

hospital. Such services shall be provided with sufficient frequency to allow the student to continue his or her educational program, as long as such services do not interfere with the medical needs of the student. The principal shall coordinate such services with the Administrator of Special Education for eligible students. Such educational services shall not be considered special education unless the student has been determined eligible for such services, and the services include services on the student's IEP.

The record shows that Student in fact received services consistent with 603 CMR 28.03(3)(c). The BSEA only has jurisdiction to determine the responsibilities of a school district to provide home/hospital services to a special education student. Therefore, Parents' case with respect to Hampden's financial responsibility for the outstanding balance due to Brattleboro Retreat is premised on Student's status as a special education student and thus turns on the question of when Hampden knew or should have known that Student was eligible to receive special education services.

Prior to Student's emotional breakdown in December 2012, triggering hospitalization, there was no indication that Student suffered from any emotional impairment. The event came as a surprise to both Parents and Hampden. Therefore, as stated above, Hampden's obligation toward Student began as a classic 603 CMR 28.03(3)(c) for a regular education student. Moreover, while Parents' apprehension about sharing information is understandable, Hampden's lack of information regarding Student's condition released them from referring Student for special education until such time as Parents requested that Hampden do so in late March 2013.

The record shows that Parents signed releases of information on March 22, 2013 and thereafter, the email of Ms. Knox of April 8, 2013 confirms that Hampden received the information, although the exact date is not clear from the record. Typically, once Student was referred, Hampden would have had an obligation to conduct evaluations of Student to ascertain her eligibility. Instead, Hampden relied solely on Brattleboro's evaluations so as to expedite the eligibility process. Hampden acted in good faith when it agreed to use Brattleboro's evaluations and recommendations in offering Student an extended evaluation IEP so as to facilitate her transfer to Cutchins.

Although Parents presented evidence that Hampden received information regarding Student prior to the April 24, 2013 Team meeting, the evidence presented did not establish what that information was or precisely when it was received by Hampden. Parents therefore did not present sufficient information to meet their burden of persuasion, pursuant to *Schaffer*, that the Team knew or should have known about Student's potential eligibility prior to the April 24, 2013 Team meeting.

Pursuant to the IEP drafted on April 24, 2013, Student's period of eligibility commenced on May 7, 2013, not April 24, 2013. Parents accepted this IEP in full the same date (SE-10). Thereafter, it was not until July 29, 2013 that Hampden learned of Parents' request that it fund Student's education during the period of her hospitalization (PE-5; SE-1).

It is not disputed, however, that Student was found eligible when the Team met on April 24, 2013 and the discussions regarding Student's eligibility ensued. It could therefore be argued that Hampden's responsibility for Student's special education programming commenced on that date. However pursuant to the accepted IEP, Parents consented to Student's period of eligibility and services starting in May 2013.

As such, the facts support a finding that Hampden met its legal obligation toward Student. Therefore, Parents are not entitled to the relief sought.

ORDER:

Parents are not entitled to the relief sought as Hampden has met its obligation under Student's IEP.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: December 17, 2013

December 17, 2013

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

HAMPDEN PUBLIC SCHOOLS

BSEA # 1403110

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

**PETER SMITH, ESQ., ATTORNEY FOR
HAMPDEN-WILBRAHAM SCHOOL DISTRICT
PARENT PRO-SE**