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

In Re: Christa McAuliffe Regional Charter Public School **BSEA # 1402591**

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 c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

Pursuant to BSEA Hearing Rule XII and by agreement of the parties, this Decision is based solely on written material. These written documents are as follows:

- Student's IEP for the period 4/14/11 to 4/14/12 (exhibit 1),
- e-mail correspondence between Parent and Student's tutors (exhibit 2),
- e-mail correspondence between Parent and Deborah Langlois (exhibit 3),
- educator licenses of Student's tutors (exhibit 4), and
- cancelled checks that Parent issued to his tutors (exhibit 5).

As agreed by the parties, I also have considered the Hearing Request filed by Parent and the written argument filed by Christa McAuliffe Regional Charter Public School (McAuliffe or McAuliffe Charter School). No other documents were filed in this case for purposes of my resolving the dispute. The above documents were filed on or before October 18, 2013 and the record closed on that date.[1]

ISSUE

The only issue to be decided in this case is whether Parent should be reimbursed for six sessions of tutoring services that occurred in October 2011.

DISCUSSION

Student attended the McAuliffe Charter School for 8th grade, which was the 2011-2012 school year, pursuant to an IEP for the period 4/14/11 to 4/14/12. On September 27, 2011, Father accepted this IEP except for concerns that he noted regarding math benchmarks. Exhibit 1.

[1] Parent is *pro se*. McAuliffe is represented by attorney Andrea Bell.

The IEP called for Student to be taught math by a special education teacher for 50 minutes each day. As reflected in the Additional Information section of the IEP, Parent also privately paid for academic tutoring in math, as well as tutoring in other subjects. Exhibit 1.

Parent does not now seek to be reimbursed for all of the math tutoring. Rather, he seeks reimbursement for math tutoring that was provided to Student during six regularly-scheduled, 50 minute math classes when her math teacher was unavailable to teach her.

In an e-mail to Parent from the McAuliffe Principal (Deborah Langlois), the Principal explained that Student was in 8th grade at the time but attended a 7th grade math class taught by a 7th grade teacher. It is not disputed that Student's 7th grade math teacher was unavailable to teach Student for six periods in October 2011, and that Student was taught by her private tutors during these times. Hearing Request; exhibits 2, 3.

The Principal's e-mail acknowledged that the math tutors paid for by Parent were working with Student during the math teacher's absences because the teacher was absent and unable to teach Student as a result of the teacher's other 7th grade responsibilities. The Principal further explained that Student's 7th grade classmates were not impacted by the math teacher's absences because they were in social studies during these times. Exhibit 3.

It is not disputed that Student's math tutors were qualified to provide math instruction to Student during the math teacher's absences. Exhibits 3, 4.

The Individuals with Disabilities Education Act (IDEA) was enacted "to ensure that all children with disabilities have available to them a free appropriate public education [FAPE]."[2] A school district may be required to reimburse parents where a school district has failed to provide the requisite services, the parents then provide those services, and the balance of equities favors reimbursement.[3] It is not disputed that Student is entitled to receive FAPE under the IDEA, as more fully described within her accepted IEP.

For the reasons explained above, Parent has persuaded me that he provided six periods of math tutoring to replace math services that should have been provided pursuant to Student's IEP but were not, and that equities favor reimbursement. Parent has provided documentation of his out-of-pocket expenses for tutoring. It is not disputed that he paid his math tutors at the rate of $50.00 per hour of tutoring session and that the total amount of tutoring time was five hours (six sessions x 50 minutes per session = 300 minutes or five hours of tutoring).

Accordingly, I find that Parent is entitled to reimbursement of $250.00.

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[2] 20 U.S.C. § 1400 (d)(1)(A).

[3] *See Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 11-13, 16 (1993); *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369-370, 373-374 (1985). See also *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 31 (1st Cir. 2006); *Rafferty v. Cranston Public School Committee*, 315 F.3d 21, 26-27 (1st Cir. 2002)

ORDER

McAuliffe Charter School shall reimburse Parent $250.00.

By the Hearing Officer,

William Crane
Dated: October 24, 2013

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THE BUREAU'S DECISION, INCLUDING RIGHTS OF APPEAL

Effect of the Decision

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. Accordingly, the Bureau cannot permit motions to reconsider or to re-open a Bureau decision once it is issued. Bureau decisions are final decisions subject only to judicial 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. Rather, a party seeking to stay the decision of the Bureau must 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," during the pendency of any judicial appeal of the Bureau decision, 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 during the pendency of judicial proceedings must seek a preliminary injunction ordering such a change in placement from the court having jurisdiction over the appeal. *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 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 Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

Rights of Appeal

Any party aggrieved by a decision of the Bureau of Special Education Appeals may file a complaint in the state court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review of the Bureau decision. 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.