

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

In re: Student

BSEA #1607800

RULING ON PARENTS' MOTION FOR AN IMPARTIAL HEARING OFFICER

This matter comes before the Hearing Officer on Parents' Motion for an Impartial Hearing Officer, filed on June 27, 2016. Parents initially filed their *Hearing Request* against the Southwick-Tolland Regional School District ("District") on March 28, 2016, challenging the District's finding that Student did not qualify for an Individualized Education Program. The District filed its response on April 8, 2016. Following several postponements requested by each of the parties, a Pre-Hearing Conference (PHC) took place on May 20, 2016, in order to clarify the issues for hearing and explore the possibility of settlement.

Following the PHC, Parents, through Counsel, filed a motion to hold future proceedings in Springfield, Massachusetts. This Motion was denied.

On June 27, 2016, Parents filed the instant Motion for an Impartial Hearing Officer, making several assertions regarding the Hearing Officer's conduct at the PHC; ¹ suggesting that she had "appeared to misstate the law in agreement of (*sic*) the position of the school district," and arguing that the Hearing Officer's denial of their motion to hold the hearing in Springfield was "only to (*sic*) the convenience of the hearing officer and opposing counsel." They requested "a neutral hearing officer for this subject motion."²

On June 30, 2016, the District filed an Opposition to Parents' Motion, which it treated and responded to as a Motion for Recusal of the Hearing Officer. The District asserted that Parents' Motion was "baseless and without merit," and that it "views the behavior of the Hearing officer at the pre-hearing conference to be commendable given the rude and often unprofessional behavior of the Parents' attorney."

No party requested a hearing on the instant motion. As neither testimony nor oral argument would advance my understanding of the issues involved, I am issuing the ruling on this motion without a hearing, pursuant to Bureau of Special Education Appeals (BSEA) *Hearing Rule VII(D)*.

For the reasons set forth below, Parents' Motion is hereby DENIED.

¹ Specifically, Parents asserted that the Hearing Officer "rolled her eyes at the parents and their counsel" and referred to District counsel by her first name, "giving the appearance of bias toward (*sic*) the child in this particular case."

² As explained below, the determination whether to recuse herself must be made, in the first instance, by the subject hearing officer.

LEGAL STANDARDS

Faced with a Motion to Recuse, a Hearing Officer must engage in a two-part analysis of whether impermissible bias exists. The first part of this analysis requires that the Hearing Officer examine her conscience and emotions to determine whether she could preside over the matter free from prejudice.³ The second part requires the Hearing Officer to make an objective, fact-based inquiry as to whether there exists a reasonable basis for the moving party's concerns regarding her ability to be fair and impartial.⁴ In the absence of either of these circumstances, a Hearing Officer should not recuse herself.

Underlying these standards are “twin – and sometimes competing – polic[y]” concerns: first, that courts (and administrative agencies) “must not only be, but must seem to be, free of bias or prejudice . . . [which requires that] the situation . . . be viewed through the eyes of the objective person,” and second, “that a judge [or hearing officer] once having drawn a case should not recuse himself on an unsupported, irrational, or highly tenuous speculation; were he to do so, the price of maintaining the purity of appearance would be the power of litigants or third parties to exercise a negative veto over the assignment of judges.”⁵

ANALYSIS

To engage in the first part of the analysis, I examine my conscience and emotions. Although Parents' counsel's behavior fell short of professional norms, I do not attribute this behavior to his clients, the Parents, whose son's interests are at stake in this proceeding. After examining Parents' concerns, I have concluded that I will be able to preside over this matter without prejudice to any party. Therefore I should not recuse myself on this basis.

The second part of this analysis requires that I conduct an objective, fact-based inquiry as to whether my “impartiality might reasonably be questioned.”⁶ The First Circuit has held that a “charge of partiality must be supported by a factual basis.”⁷ The facts asserted by the Parents are described above: the Hearing Officer declined Parents' request to change the hearing venue from Boston to Springfield, instead scheduling the hearing to take place in Worcester to reduce travel time for the witnesses;⁸ and Parents' Counsel disagrees with what he described as the Hearing Officer's misstatement of the law.

According to the First Circuit, disqualification would be appropriate only if these “facts provide what an objective, knowledgeable member of the public would find to be a reasonable

³ See *Lena v. Commonwealth*, 369 Mass. 571, 575 (1976).

⁴ See *Haddad v. Gonzalez*, 410 Mass. 855, 862 (1991); *Lena*, 369 Mass. at 575 (internal citations omitted).

⁵ *In Re United States*, 666 F.2d 690, 694 (1st Cir. 1981).

⁶ *Lena*, 369 Mass. at 575 (quotation omitted).

⁷ *In Re United States*, 666 F.2d at 695.

⁸ As stated in the Order issued June 21, 2016, “The office space of the BSEA is in Boston. At times, the BSEA rents space in Worcester or Springfield in order to increase accessibility of the proceedings to parties who work or reside in other parts of the state, but the agency is not required to hold a particular proceeding in a particular location. In light of the concerns raised by the Parents, I have moved the Hearing in this matter from Boston to Worcester to reduce travel time for the witnesses.”

basis for doubting the [Hearing Officer]’s impartiality.”⁹ Although the BSEA endeavors to accommodate parties’ requests, hearings involving Western Massachusetts communities are routinely held in Worcester, rather than Springfield or Boston. In this instance, such an accommodation impacts both parties – the family and the District – in the same way.

As for a disagreement regarding the law, Parents’ Counsel sets forth no detail in his June 27, 2016 Motion regarding any statements of law made by the Hearing Officer. In a separate letter he submitted, also on June 27, 2016, Parents’ Counsel requested that the undersigned Hearing Officer “clarify [my] position” regarding the law governing independent evaluations and eligibility for special education. His assertions in that letter mischaracterized the Hearing Officer’s statements at the Pre-Hearing; moreover, nothing in the appeals process provides for the type of clarification requested.

As such, the facts asserted by Parents in their Motion do not provide what a “knowledgeable member of the public would find to be a reasonable basis for doubting the [Hearing Officer]’s impartiality.”¹⁰

CONCLUSION

For the reasons described above, recusal of the undersigned Hearing Officer in the above-referenced matter is neither necessary nor appropriate.

ORDER

Parents’ Motion for an Impartial Hearing Officer, interpreted and addressed as a Motion for Recusal, is hereby DENIED.

By the Hearing Officer:

Amy M. Reichbach
Dated: October 11, 2016

⁹ *In Re United States*, 666 F.2d at 695.

¹⁰ *Id.*