

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

In Re: Student v. Ludlow Public Schools
BSEA: 15-09319

Ruling on Motion for Recusal

On June 24, 2015, the BSEA received the Parent's Motion for Recusal. The parent alleges that the current BSEA Hearing Officer is "incapable of being impartial" and should recuse herself from this matter. On June 29, 2015 the school district filed an opposition to the Motion for Recusal. School district's counsel denied any bias on the part of the Hearing Officer. She verified that she has never met this Hearing Officer and only recalls handling one case with the current hearing officer. After careful consideration of the arguments of the parties, I find that recusal is not warranted in this case.

The parent has not demonstrated the existence of any of several factors that might prompt recusal of this Hearing Officer. Motions for Recusal must be considered seriously by the challenged decision-maker. It is of grave importance to the administration of justice that all participants in a judicial or quasi-judicial proceeding have trust and confidence in the impartiality and the expertise of the person conducting the proceeding. It is also important that the administrative functions of a due process entity be efficient, fair and responsive to all interested participants, and not subject to disruption or delay by a very small minority of individuals.

Weighing those two objectives, and seeking to reconcile them, a challenged hearing officer must examine her own professional qualifications to hear the type of appeal presented; must be alert to any objective bars that arise in the particular matter before her; must consider any subjective biases or prejudgments she may have about the parties or subject matter; and must anticipate how her conduct of the matter might "appear" to the parties and the public. *Brockton Public Schools*, 16 MSER 367 (2010); *Duxbury Public Schools*, 14 MSER 363 (2008); *Marblehead Public Schools*, 8 MSER 84 (2002).

In the matter at hand, I consider each of the above-noted elements which might support recusal:

Professional Qualifications

The parent posed no challenge on this basis and therefore disqualification is not warranted.

Objective Bars

Objective factors which usually warrant recusal include any personal or professional connection the hearing officer might have with a hearing participant, or 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. These factors include but are not limited to: potential relationship-based bias due to a familial tie with a participant; residence within the school district or a prior association with counsel.

In this matter, the parent alleges that perhaps there is some type of pre-existing relationship with the school district's attorney. I have no current or historical, familial, professional or financial connection to any party, potential witness, public entity or counsel in this matter. I have never presided over any Hearing or Prehearing Conference in which the school district's counsel represented any party and I have never personally met the school district's counsel. During my several years as a BSEA Hearing Officer, contact with the school district's counsel has been limited to 4-5 telephone conference calls with the school district's attorney in which she was representing a party in a BSEA dispute. Therefore, I find that there is no objective bar to continuing as Hearing Officer in this matter.

Subjective Factors

The hearing officer must also examine her own emotions and conscience to determine whether she is truly capable of conducting an unbiased, impartial due process proceeding. I have made this examination. I find that I do not have any impermissible bias or prejudice, that I am capable of fairly presiding over this matter without prejudice to either party and of rendering a decision based solely on the evidence presented and the applicable law.

Appearance

The final level of inquiry is whether the hearing officer's impartiality might reasonably be questioned by the participants or the general public. To be disqualifying, the alleged bias, prejudice, improper remark, conduct or ties must arise from some extrajudicial

source. Facts or circumstances gleaned from participation in a current or prior appeal involving the same parties or subject matter, or objections to prior rulings in the current matter that may be unsatisfactory to the party seeking recusal, do not constitute a proper foundation for disqualification. 28 USC s. 455; *Boston's Children First*, 244 F.3d 164 (1st Cir. 2001); *DeMoulas v. Demoulas Super Markets*, 424 Mass. 501 (1997); *Commonwealth v. Gogan*, 389 Mass. 255 (1983)

In this matter, the parent's argument in support of disqualification of this hearing officer rests on her dissatisfaction with this Hearing Officer's ruling. Unsatisfactory experiences do not in and of themselves indicate partiality or bias on the part of the hearing officer, and do not, without more, provide sufficient support for recusal. While reasonable people may disagree on the substantive merits of any decision or may experience discomfort during any part of the hearing process, I do not find on this record that a reasonable member of the public could point to any factor or circumstance causing doubt as to my impartiality. Therefore, I find that recusal is not warranted on the basis of appearance of impartiality.

While there is no reasonable basis for granting the Parent's Motion for Recusal, the BSEA is cognizant of the parent's discomfort and lack of confidence in having the current hearing officer continue in this matter. Additionally, the early stage reassignment to another hearing officer is not likely to produce real potential for procedural and substantive harm to the school district or a substantial risk of disruption to the administrative processes at the BSEA. This matter, therefore, will be referred to the Director of the BSEA for reassignment to another hearing officer.

Order

The Parent's Motion for Recusal is **DENIED**. This matter will be referred to the Director of the BSEA for reassignment to another hearing officer.

So Ordered by the Hearing Officer,

Ann F. Scannell

Dated: June 30, 2015

