

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

In Re: Halsey¹

&

BSEA #1605042

Lenox Public Schools

ORDER

This matter comes before the Hearing Officer on the Requests of the Parties for clarification of the Decision issued on June 22, 2016 in the instant matter. That Decision found that Lenox had improperly declined to accept a medical note for home tutoring during the spring 2016. The Decision concluded:

As a remedy for this procedural violation Lenox shall provide six weeks of home-based academic instruction to Halsey during the summer 2016.

The Parties requested guidance on implementation of the remedy. While they agree that Halsey could receive the tutoring services at a “neutral location” ie the Town Hall, they disagree about how to make Halsey available for the tutoring. The Parent requested door-to-door transportation to the tutoring site asserting that her presence in the home is required for the safety of the other occupants. The School argues that the distance between Halsey’s home and the Town Hall is too short, one half mile, to necessitate transportation and that other competent supervisors are available to maintain the home safely while the Parent drives Halsey to and from tutoring.

¹ “Halsey” is a pseudonym selected by the Hearing Officer to preserve the privacy of the Student in documents available to the public.

After careful consideration of the Parties' arguments I find that Lenox is responsible for ensuring both that Halsey receives the full special education program to which he is entitled and that it fully complies with the June 22, 2016 BSEA Order. Lenox may discharge these obligations either by providing the tutoring in the Student's home, or by making all appropriate arrangements to ensure that Halsey actually attends and receives the academic tutoring it was ordered to provide in June. The method of delivering tutoring services is Lenox's choice.

A choice to provide a necessary "home-based" special education service off-site, however, comes with an obligation to make that service accessible to the Student. Regardless of the reasonableness of the Parent's position, if the Parent cannot, or will not, bring the Student to the service, the School district must. See: Nauset Public Schools, 22 MSER 40, 45 (2016); Salem Public Schools, 22 MSER 60 (2016). The alternative is failure to deliver a free appropriate public education and to implement a BSEA Order.

ORDER

Should Lenox continue to offer the tutoring services contemplated in the June 22, 2016 Decision at a location other than Halsey's home, Lenox shall provide round trip transportation to Halsey to ensure his receipt of a free, appropriate public education.

By the Hearing Officer

Lindsay Byrne
Dated: July 15, 2016