

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

IN RE: NASHOBA REGIONAL SCHOOL DISTRICT

&

BSEA #1804287

ZUL¹

RULING ON PARENT’S MOTION FOR RECUSAL

This matter comes before the Hearing Officer on the Parent’s March 22, 2018 Motion for Recusal and for a Postponement.

PROCEDURAL HISTORY OF THE MOTION

On March 22, 2018 the BSEA received, by facsimile, a letter from the Parent to the Director of the BSEA requesting a postponement of the Hearing scheduled to begin on March 29, 2018 and removal of the Hearing Officer. The letter was accompanied by a five page “Affidavit.” There is no indication that either document was sent contemporaneously to the opposing counsel as required by BSEA Rules. See e.g. BSEA Rules III A 1; VII C. The BSEA Director reviewed the Parent’s submission and, noting it lacked certification of service to opposing counsel, sent a copy directly to her. The BSEA Director determined that the Parent’s letter should be construed as a Motion for Recusal which must be addressed by the assigned Hearing Officer. Given the time sensitive nature of the Parent’s Motion this Ruling is issued in advance of the expiration of the seven-day time period for opposing party response. BSEA Rule VII C.

STANDARDS FOR CONSIDERATION OF RECUSAL REQUESTS

Requests for recusal are given serious consideration by Hearing Officers who must balance the public’s need for both confidence in the impartiality and expertise of the decision-maker and its interest in the fair and efficient administration of the decision-making process. To that end the challenged Hearing Officer evaluates the presence, absence and/or degree of four

¹“Zul” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

factors that could affect the Hearing Officer's capacity to render an expert, unbiased decision in a contested matter, or the public's perception of that capacity. *Rafael and Norton Public Schools*, 22 MSER 212 (2016); *Taunton Public Schools and Nelson*, 17 MSER 51 (2011); *Brockton Public Schools and Xylon*, 16 MSER 357 (2010); *Duxbury Public Schools and Ishmael*, 14 MSER 360 (2008).

The questions to be answered for any recusal Motion are:

1. Does the Hearing Officer have the professional qualifications required to render an informed decision?
2. Are there objective factors, such as a familial or financial link with a litigant, that would fairly call into question the Hearing Officer's ability to maintain objectivity and render an impartial decision?
3. Are there subjective factors, such as a personal or political prejudice, that could affect the Hearing Officer's ability to fairly assess the evidence, accommodate the participants and render an impartial decision?
4. Are there extrajudicial factors, such as public pronouncements or financial entanglements, that might reasonably lead the public to question the impartiality of the Hearing Officer?

Facts or circumstances gleaned from participation in the current, or a previous, proceeding 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 U.S.C. §455; *Boston's Children First*, 244 F.3d 164 (1st Cir. 2001).

DISCUSSION

After careful consideration of the Parent's Letter and supporting document, as well as the procedural history and the current posture of this matter, it is my determination that the Parent's Request for Recusal should be DENIED. I further find that it is more likely than not that the primary purpose of its submission, in time, manner and form, was to delay these proceedings.

The Parent did not assert, nor is there any reasonable basis for, a challenge to the Hearing Officer on the basis of professional qualifications. The Parent did not offer any evidence of, and I am unaware of the existence of, an objective or extrajudicial barrier to the Hearing Officer's capacity to make an informed, unbiased decision in this matter. As the Hearing Officer I have examined my own conscience and I am unable to find any impermissible bias or prejudice that could affect my capacity to fairly conduct the Hearing and to render a decision based solely on the evidence and the applicable law.

The Parent appears to seek disqualification of the Hearing Officer because the Parent does not want the Hearing to proceed on the schedule established by the Hearing Officer, with the consent of the Parties, on January 10 and February 27, 2018. Her three previous requests for postponement of the Hearing, all filed in the last 20 days, have been denied. Unfavorable rulings, however, even a series of them, do not in themselves indicate partiality or bias on the part of the decision-maker and do not, without more, provide sufficient support for recusal.

It is important to note that the School is the moving Party in this matter. It has been more than four months since the School first filed its Hearing Request seeking a BSEA determination that the October 2017- October 2018 IEP it developed beginning in September 2017 appropriately meets the Student's needs. The School has steadfastly opposed postponements asserting that the Student is currently not receiving the free appropriate public education to which he is entitled. The first day of Hearing, set for March 29, 2018, will be convened solely to take the testimony of one School witness who will not be available, for medical reasons, for the next scheduled two days of Hearing. Those Hearing dates, April 25 and 26, 2018, are four weeks in the future. Although the School is submitting its full complement of proposed exhibits in advance of the March 29, 2018 Hearing date, the Parent has been permitted an additional two weeks to submit hers. The Parent's assertions of unfair prejudice, surprise, onerousness, and lack of response throughout the Hearing process are not supported by the record.

ORDER

The Parent's Motion for Recusal is DENIED.

The Parent's Fourth Motion to Postpone the Hearing is DENIED.

By the Hearing Officer

Lindsay Byrne
Date: March 27, 2018