

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

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In Re: Baystate Academy Public Charter School

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BSEA #1812372

Leland¹

RULING ON PARENT MOTION FOR RECUSAL

This matter comes before the Hearing Officer at the request of the responding party, the Parent, that a different Hearing Officer be assigned to conduct the instant appeal. The Parent's request, sent by way of a December 21, 2018 letter to the Director of the Bureau of Special Education Appeals, is construed as a Motion for Recusal. Baystate Academy Charter Public School (hereinafter "the School") filed an Opposition to the Motion on January 31, 2019. In order to properly address the Recusal Motion a brief outline of the procedural history of this matter is helpful.

BACKGROUND²

1. On June 25, 2018 the School filed a timely Request for Hearing at the Bureau of Special Education Appeals (hereinafter "BSEA") in response to the Parent's request for a publicly funded Independent Educational Evaluation (hereinafter "IEE"). The School sought a finding that the evaluations of Leland it had conducted during the spring 2018 were comprehensive and appropriate.
2. The BSEA issued a Notice of Hearing to take place on July 13, 2018. The Hearing Officer issued an Order setting a conference call date of July 9, 2018.

¹"Leland" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

²All events recited here are reflected in documents contained in the Administrative Record.

3. On July 9, 2018 when the Hearing Officer attempted to connect the Parties no one from the School was available to participate in the conference call. When contacted, the Parent requested an interpreter and a postponement of the conference call.³
4. On July 12, 2018 the School, the moving party, requested a postponement of the July 13, 2018 Hearing due to the unavailability of its representative for unforeseen medical reasons. The School's request was granted. The Hearing was rescheduled to August 9, 2018.
5. On August 3, 2018 the Parent requested a postponement of the August 9, 2018 Hearing, asserting that she was not ready to proceed due to Leland's changed circumstances. The Parent requested a prehearing conference call. The Parent's postponement request was granted. An in-person Prehearing Conference was scheduled for September 18, 2018.
6. On August 31, 2018 the Hearing Officer scheduled a conference call to take place on September 5, 2018.
7. A conference call was held on September 5, 2018. An interpreter participated. The Parent informed the participants that Leland had been hospitalized and evaluated out of town during the summer. Leland was to enter a partial hospitalization program locally upon discharge sometime in September 2018. Leland's participation in both these programs could yield additional pertinent information for the Team. The School offered to conduct updated evaluations at the partial hospitalization program. The School offered to fund a Central Auditory Processing evaluation, as requested by the Parent, at a local hospital hearing clinic.

The Parent requested a postponement of the Prehearing Conference scheduled for September 18, 2018 and confirmed her request in writing the same day. The Parent's request was granted. The Parties were ordered to submit written status reports on September 28, 2018.
8. On September 26, 2018 the School, the moving party, requested an extension of time for scheduling a Hearing asserting that the Parties were working cooperatively to develop an appropriate IEP for Leland in light of significantly changed educational needs since the last proposed IEP. The Parent did not submit a status report or an objection to the School's postponement request. The School's request was granted. The Parties were ordered to submit written status reports on October 30, 2018.
9. On October 30, 2018 the School requested additional time before setting Hearing dates asserting that the Parties continued to work cooperatively to meet Leland's educational needs. The Parent did not file a status report. The Parent did not object to the School's request for additional time to work together before setting a Hearing date.

³All subsequent BSEA communications with the Parent were orally interpreted or sent by first class mail in both English and in translation.

The School's request for an extension of time was granted. The Parties were ordered to submit written status reports, including a list of proposed Hearing dates, on December 20, 2018. The Parties were advised that no further postponements would be permitted.

10. On December 21, 2018 the Parent wrote to the Director of the BSEA seeking removal of this Hearing Officer. She complained that the Hearing Officer did not understand the interpreter or the Parent during the conference call(s). She further complained that the Hearing Officer should have ordered the IEE the Parent sought for Leland in June, 2018 without a Hearing. The Parent's letter had not been sent/copied to the School.

11. The Director of the BSEA responded to the Parent on December 26, 2018 alerting her that BSEA Rules require that a Party's request for a different Hearing Officer be presented to the original Hearing Officer. There is no indication in the file that the BSEA letter to the Parent was sent to the School.

12. On January 17, 2019 the Hearing Officer forwarded copies of the December 2018 Parent-BSEA correspondence to the School. The Parties were ordered to provide written status updates with proposed Hearing dates, along with any objections to the Parent's recusal request, no later than January 31, 2019.

13. On January 30, 2019 the School submitted an Opposition to the Parent's Request for Recusal and a status report with proposed Hearing dates. The Parent did not submit a status report by the deadline.

STANDARDS FOR CONSIDERATION OF RECUSAL REQUESTS

Requests for Recusal are given serious consideration by Hearing Officers. The public's need for confidence in the impartiality and the expertise of the decisionmaker and its interest in the fair and efficient administration of the decision-making process must be carefully balanced. To that end the Hearing Officer evaluates the presence, absence and/or degree of four 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 367(2010); *Duxbury Public Schools and Ishmael*, 14 MSER 360(2008).

The questions to be answered for any recusal Motion are:

1. Does the challenged 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 letters, the School's Opposition, the administrative record and the current posture of this matter it is my determination that the Parent's Motion for Recusal should be denied. The Parent did not assert, nor is there any reasonable basis for, a challenge to the Hearing Officer's 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. I have examined my own conscience and I am unable to find any impermissible bias or prejudgment that could affect my capacity to fairly conduct the Hearing and to render a decision solely on the evidence and the applicable law. Therefore, none of the recognized criteria for recusal has been met.

The Parent's request for removal of the Hearing Officer reflects a misunderstanding common to *pro se* litigants of the acceptable grounds for recusal, the regulations applicable to school-based and independent educational evaluations and the special education appeals process. While the Parent here correctly points out that six months is far too long a time in which to resolve a simple dispute about a parental request for an IEE, it is important to note that during that time this Parent requested three postponements, acquiesced in 2 additional postponements sought by the School and failed to timely respond to BSEA Orders for information and input. Nevertheless, it is apparent that this discrete component of the Parties' ongoing relationship should be resolved. And so it shall.

This matter will proceed to Hearing on March 7, 2019. No further postponements will be permitted.

ORDER

The Parent's Motion for Recusal is DENIED.

By the Hearing Officer

Lindsay Byrne
Dated: February 7, 2019