

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

In re: Easthampton Public Schools v.
Student

BSEA# 1911816

CLARIFICATION ORDER

On June 7, 2019, Easthampton Public Schools (Easthampton) filed a *Motion for Summary Judgment (Motion)* in the above-referenced matter. A Ruling on this *Motion*, denying Summary Judgment, was issued on July 22, 2019.

On July 25, 2019, Easthampton requested clarification of the final part of the Ruling.

As stated in the Ruling, the Massachusetts regulation setting the 16-month window for Parents to request full or partial funding for an IEE applies *only* to individuals who are seeking an “automatic” fully or partially funded IEE under the state (as opposed to federal) regulation that creates the option for income eligible parents. The record lacks information as to whether Parents in the instant case are specifically seeking an IEE pursuant to 603 CMR 28.04(5) (c)(iv) (6), or meet the income requirements that would entitle them to full or partial funding of an IEE under this provision. If Parents do not meet the income requirements, or decline to share income information, the aforementioned Massachusetts regulation does not apply to them.

Moreover, as stated in the Ruling, neither the federal statute nor regulations establishes a specific timeframe during which Parents must request an IEE. Certain courts appear to have adopted a standard of reasonableness. Thus, a determination that Parents’ request for an IEE almost three years after the District’s evaluation is unreasonable (as Easthampton submits) requires a finding by the Hearing Officer following an evidentiary hearing. Easthampton must present evidence on both of the aforementioned issues. As discussed in the Ruling, summary judgment is not the proper vehicle to dispose of this case.

Lastly, given the District’s unavailability on August 16, 2019, the Hearing will proceed on September 25, 2019, the date selected by the Parties in June 2019, consistent with the Corrected Order issued on July 11, 2019.

ORDER

1. Exhibits and witness lists are due by the close of business on September 18, 2019.
2. A **Hearing** will be held **on** September 25, 2019 at 10:00 a.m., at Catuogno Court Reporting, 446 Main St., Suite 16, Worcester, MA.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: July 30, 2019