

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In Re: Ollie¹

&

BSEA#2102164

Springfield Public Schools

RULING ON PARENT'S MOTION FOR RECUSAL

This matter comes before the Hearing Officer at the Request of the Parent that a different Hearing Officer be assigned to complete the instant appeal. The Parent's Request was filed on February 10, 2021. The Parent had, by then, completed presentation of her evidence and oral closing argument over the course of three hearing days: January 25, January 26 and February 2, 2021. The Hearing record remained open solely for the receipt of the School's oral closing statement which was scheduled to take place on February 11, 2021.

The Hearing reconvened on February 11, 2021. Before beginning its closing statement the School argued in opposition to the Parent's Motion for Recusal. Given the posture of the appeal the Hearing Officer made an oral Ruling denying the Parent's Request and the case proceeded to closure. This Ruling is issued to memorialize the oral Ruling made at Hearing.² 801 CMR 1.01 (7)(a)(1).

STANDARDS FOR CONSIDERATION OF RECUSAL REQUESTS

Requests for recusal are given serious consideration by BSEA Hearing Officers. The public's need for confidence in the impartiality and the expertise of the decision maker, and its interest in the fair and efficient administration of the decision-making process itself, must be carefully balanced. To that end the Hearing Officer evaluates the presence, absence and/or

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

² All events recited here are reflected in the Administrative Record and the Hearing Transcript.

degree of four factors (below) that could affect a Hearing Officer's capacity, or the public's perception of that capacity, to render an expert, unbiased decision in a contested matter. *Rafael v. Norton Public Schools*, 22 MSER 212 (2016); *Taunton Public Schools v. Nelson*, 17 MSER 51 (2011); *Brockton Public Schools v. Xylon*, 16 MSER 367 (2010); *Duxbury Public Schools v. 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 to 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 proceeding, or in 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 F3d 164 (1st Cir. 2001).

DISCUSSION

After careful consideration of the Parent's unusually timed request, the School's opposition, the interests of the parties and the public in the timely, efficient and fair resolution of IDEA appeals, and the particular history and posture of this appeal, it is my determination that the Parent's Motion for Recusal should be denied. The Parent's request for removal of the Hearing Officer reflects a significant misunderstanding of the acceptable grounds for recusal and seeks personal and societal responses well beyond the scope of a special education hearing. Her arguments do not, even when generously read, bear on the capacity of the Hearing Officer to execute her responsibilities under the IDEA or MGL c. 71B. 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 might have affected, or could affect, my capacity to fairly conduct the hearing, or to now render a decision based solely on the evidence presented and the applicable law. Therefore, none of the established criteria for recusal has been met. On the other hand, as the School pointed out in its opposition argument, recusal at this stage in the hearing would

operate as a mistrial, causing significant hardship, confusion, delay and expense to both parties and to other interested participants, not least the Student whose education is actually at the center of the proceedings. There is no reasonable support factually, legally or logically for recusal. Every reasonable argument favors maintaining the course.

ORDER

The Parent's Motion for Recusal is DENIED.

By the Hearing Officer

Lindsay Byrne
Dated: February 16, 2021