

MASSACHUSETTS SPECIAL EDUCATION REPORTER

*Massachusetts Bureau of Special Education Appeals
Administrative Law Decisions*

PUBLISHED BY LANDLAW LEGAL PUBLISHERS

VOLUME 25 2019

Reece Erlichman, Director

BSEA Hearing Officers / Year Appointed

Raymond Oliver	1979	Sara Berman	2001
Lindsay Byrne	1984	Ann Scannell	2009
Rosa Figueroa	1993	Amy M. Reichbach	2014
Catherine Putney-Yaceshyn	2000		

BSEA Mediators / Year Appointed

Marc Sevigny, Coordinator	2006		
Kathy Bures	1980	Matthew Flynn	2011
Susan Singleton	1995	Rebecca Stone	2012
Steve Lilly-Weber	2004	Leslie Bock	2014
Myrto Flessas	2010		

COMMENTATORS:

Kotin, Crabtree & Strong

Robert K. Crabtree
Eileen M. Hagerty Daniel T. S. Heffernan
Joseph B. Green Marie F. Mercier
Melanie R. Jarboe Alicia M. Parmentier

Stoneman, Chandler & Miller

Nancy Nevils
Colby Brunt
Andrea Bell
Colleen Shea



Landlaw's MSER is published every other month.

A discounted rate is available to municipal officials and special-needs advocates.

Copyright © 2019 by Landlaw, Inc.

MASSACHUSETTS SPECIAL EDUCATION REPORTER (ISSN-1522-6719)

675 VFW Parkway, #354, Chestnut Hill, MA 02467

(800) 637-6330

Bureau of Special Education Appeals—Administrative Law Decisions



In This Issue

ADHD-FAPE-Least Restrictive Environment-Unilateral Placement—Hearing Officer Catherine M. Putney-Yaceshyn found that a 12-year-old boy diagnosed with severe ADHD, Other Specified Neurodevelopmental Disorder, and depression, required a placement at the Learning Prep School in order to receive a FAPE. The Hearing Officer ordered the Nashoba Regional School District to reimburse Parents for the unilateral placement of their son for the 2019-2020 school year. While the partial inclusion program at the district’s Middle Connections Program offered many of the same supports and approaches as Learning Prep, the district’s program required participation in classrooms with over 20 students in general education settings for science and social studies that the Student would not be able to access. The evidence established that the Student required a small, language-based setting for all academics given his processing speed, working memory, learning disabilities, and anxiety. Under an earlier settlement agreement between the district and the Parents, the middle schooler had been attending Learning Prep for two years prior to the dispute. Nashoba Regional School District (Decision) 244

Autism-IEP-Compliance-Evaluation-Parental Consent-Procedural Violations-Compensatory Services— Finding the Shrewsbury Public Schools did not commit any procedural errors, Hearing Officer Amy M. Reichbach, however, ruled that it had failed to implement accepted IEPs for a minimally verbal 17-year-old boy with an autism spectrum disorder and global developmental delays. The logs maintained by the speech/language pathologist presented at the hearing established that the district failed to provide at least 42, 30-minute blocks of direct speech/language services and 15, 30-minute blocks of consultation over two school years. With respect to whether the IEPs proposed by the district but not fully accepted by the Parents provided FAPE, the Hearing Officer ruled that she had insufficient information to make a determination due to the Parents’ failure to consent to a reevaluation and provided for substitute consent with the district to begin the reevaluation within 10 days. Shrewsbury Public Schools (Decision) 255

Nonverbal Learning Disability-IEP-Least Restrictive Environment-Unilateral Placement-Expert Testimony— Hearing Officer Rosa I. Figueroa rejected Parents’ request for reimbursement from the Bourne Public Schools for their unilateral placement of their 13-year-old daughter at the Riverview School. After attending the third and fourth grades in a substantially separate program in the Plymouth Public Schools, Bourne proposed an IEP for fifth grade returning the Student to the district with a placement in a partial inclusion program at Bourne Middle School. Parents rejected the placement and the IEP and enrolled their daughter, who carried multiple diagnoses including ADHD, Reactive Attachment Disorder, Non-verbal Learning Disability, Dyslexia, Dyscalculia, and anxiety, in the Riverview School where she remained for two and a half years. Discounting the testimony of Parents’ experts from the Integrated Center for Child Development, the Hearing Officer found that the testing and evaluations performed by the district provided a more accurate assessment and supported the district’s proposed placement in a more inclusive setting. The Hearing Officer observed, however, that where the teenager had been out of district for almost three years, an extended evaluation should be conducted upon re-entry and that she be eased into classrooms “if and when appropriate.” Bourne Public Schools (Decision) 268

continued on next page



Practice and Procedure-Joinder-Summary Judgment-DESE-Charter School—Denying both DESE’s motion to dismiss itself from Parent’s hearing request and Parent’s motion for summary judgment, Hearing Officer Amy M. Reichbach ruled that a hearing was required in order to determine whether KIPP Academy in Lynn had properly placed a Student with an emotional disability in a substantially separate therapeutic program in the Marblehead Public Schools. KIPP asserted it had placed the Student at Marblehead’s TIDES program only after Lynn’s special education director was unresponsive. DESE issued a waiver for the 2018-2019 school year but informed KIPP that a second waiver would not be forthcoming for the following school year. For the 2019-2020 school year, Lynn proposed placement in an in-district, substantially separate therapeutic program while DESE changed course and ultimately issued a second waiver to allow the Student remain in the TIDES program shortly after the beginning of the school year. The Hearing Officer found that material issues of fact remain regarding the applicability of 603 CMR 28.10(6) and that DESE must remain as a party in the event that it bears any responsibility for the Student’s inability to return to TIDES at the start of the school year and any compensatory services that may be required. KIPP Academy (Ruling on the Department of Elementary and Secondary Education’s Motion to Dismiss and Parent’s Motion for Summary Judgment) 292

Practice and Procedure-Mootness—On a hearing request filed by the Whitman-Hanson Regional School District, Hearing Officer Amy M. Reichbach held that there was no live issue before her after the Parent had accepted an IEP placing her son at the Victor School. The district had originally filed a hearing request seeking an order that the IEP it had proposed provided FAPE in the least restrictive environment and that it was not required to fund an independent educational evaluation. The Parent, who had filed multiple motions to dismiss, dropped the request for the evaluation and eventually signed an amended IEP that specified a placement. The Hearing Officer denied Parent’s fourth motion to dismiss before ruling that there was no controversy before her. Whitman-Hanson Regional School District (Decision) 231

Practice and Procedure-Motion to Dismiss—In a previously unreported ruling, Hearing Officer Amy M. Reichbach denied Parent’s second motion to dismiss a hearing request filed by the Whitman-Hanson Regional School District. Where Parent had not accepted the proposed placement and the child remained out of school, the Hearing Officer found that the district had stated a plausible claim to relief even though the Parent had dropped her request for a funded independent educational evaluation and had signed the IEP proposed by the district. Whitman-Hanson Regional School District (Ruling on Parent’s Second Motion to Dismiss) 234

Practice and Procedure-Motion to Dismiss-Jurisdiction-Statute of Limitations—Finding that Parent’s claims were beyond the two-year statute of limitations for both IDEA and Section 504 claims, Hearing Officer Rosa I. Figueroa dismissed Parent’s hearing request alleging that the Manchester-Essex Regional School District had denied her 16-year-old daughter a FAPE when it failed to place her on a Section 504 plan during elementary and middle school. The Hearing Officer rejected the Student’s assertions that the claim was hers and should be tolled until she reaches the age of majority. The Hearing Officer also found no merit in the claim that an alleged failure of OCR to provide notice that a BSEA hearing request should have been filed after a complaint was settled triggered any requirement to toll the statute. The Student had left the district in December 2015 and one of her Section 504 claims involved the district’s decision to exclude the Student from a Halloween dance in 2016. Manchester-Essex Regional School District (Ruling on Manchester-Essex Regional School District’s Motion to Dismiss) 238

. continued on next page



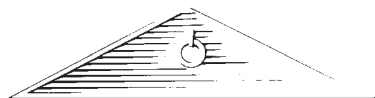
INDICES

For 2015-2018 cumulative MSER indices, please consult the Cumulative Indices section in this volume.

For 1995-2014 cumulative MSER indices, and CD of decisions published in MSER, please consult the stand-alone 20-year supplemental index.

To order, call (800) 637-6330, ext. 204 or email us at [subscriptions @landlaw.com](mailto:subscriptions@landlaw.com)

A COMPREHENSIVE ON-LINE ARCHIVE OF KEYWORD-SEARCHABLE MASSACHUSETTS SPECIAL EDUCATION REPORTER DECISIONS IS INCLUDED IN YOUR SUBSCRIPTION AND IS AVAILABLE AT WWW.LANLAW.COM



LANDLAW LEGAL PUBLISHERS

Cumulative Decisions Reported–January–December 2019

Alphabetical Listing

NOTE: Docket numbers followed by (C.A.) represent Civil Action numbers.

In Re:	Docket #	Date	Page #
Baystate Academy Public Charter School (Ruling on Parent Motion for Recusal)	18-12372	February 7, 2019	10
Billerica Public Schools (Ruling on Cross Motions for Summary Judgment)	19-11391	July 8, 2019	136
Boston Public Schools (Ruling on Cross-Motions for Summary Judgment)	19-00241	March 15, 2019	37
Bourne Public Schools (Decision)	20-00039	December 23, 2019	268
Brookline Public Schools (Ruling on Brookline Public Schools' Partial Motion to Dismiss)	19-12553	July 29, 2019	158
Easthampton Public Schools (Ruling on Parent's Motion for Recusal of Hearing Officer)	19-04761	March 26, 2019	43
Easthampton Public Schools (Ruling on Easthampton Public Schools' Motion for Summary Judgment)	19-11816	July 22, 2019	143
Easthampton Public Schools (Clarification Order)	19-11816	July 30, 2019	146
Fairhaven Public Schools (Decision)	19-04924	August 6, 2019	160
Falmouth Public Schools (Ruling on Falmouth Public Schools' Motion to Join the Department of Children and Families and the Department of Mental Health)	19-06369	May 8, 2019	64
Framingham Public Schools (Decision)	19-05348	June 3, 2019	89
Ipswich Public Schools (Ruling on School Motion for Summary Judgment)	19-06526	September 6, 2019	220
Ipswich Public Schools (Decision)	19-06526	October 30, 2019	227
KIPP Academy (Ruling on the Department of Elementary and Secondary Education's Motion to Dismiss and Parent's Motion for Summary Judgment)	20-03363	December 26, 2019	292
KIPP Academy (Ruling on the Department of Elementary and Secondary Education's Motion to Dismiss and Parent's Motion for Summary Judgment)	20-03363	December 26, 2019	292
Lincoln-Sudbury Regional School District (Ruling on Motion for Summary Judgment)	19-05403	February 7, 2019	12
Lincoln-Sudbury Regional School District (Decision)	19-05403	June 28, 2019	120
Lowell Public Schools (Ruling on Lowell Public Schools' Motion to Dismiss and Parents' Motion for Summary Decision)	19-05981	March 11, 2019	34
Manchester-Essex Regional School District (Ruling on Manchester-Essex Regional School District's Motion to Dismiss)	20-03498	December 2, 2019	238
Mansfield Public Schools (Ruling on Mansfield Public Schools' Motion to Dismiss or, in the Alternative, Statement of Counterclaims)	18-03315	January 8, 2019	1
Maynard Public Schools (Decision)	19-00813	February 27, 2019	22
Mendon-Upton Regional School District (Ruling on Parents' Motion to Allow Parent to Chaperone Field Trip)	19-07157	May 6, 2019	61
Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Developmental Services and the Department of Children and Families)	19-08850	June 27, 2019	114
Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Mental Health)	19-11053	July 9, 2019	138
Middleton Public Schools (Ruling on Middleton Public Schools' Motion for Summary Judgment)	19-09931	May 24, 2019	86
Montachusett Regional Vocational Technical School (Ruling on Motion of Parent for Recusal of Hearing Officer)	19-04777	January 17, 2019	17
Montachusett Regional Vocational School District (Ruling on School's Amended Motion to Dismiss Construed as an Amended Motion for Summary Judgment)	19-04777	January 28, 2019	19
Montachusett Regional Vocational Technical School (Ruling on Montachusett Regional Vocational Technical School's Motion to Dismiss)	19-07993	April 17, 2019	57
Mystic Valley Regional Charter School (Decision)	19-07460	July 26, 2019	147
Nashoba Regional School District (Ruling on School's Motion to Join the Department of Mental Health)	19-06261	March 11, 2019	32
Nashoba Regional School District (Decision)	18-10420	May 17, 2019	70
Nashoba Regional School District (Ruling on School's Motion to Dismiss)	19-06261	November 26, 2019	236
Nashoba Regional School District (Decision)	19-09691	December 4, 2019	244
Natick Public Schools (Decision)	14-08860	July 24, 2015	197
Natick Public Schools (Decision)	17-12065	August 29, 2019	208
Neighborhood House Charter School (Ruling on Motion of Neighborhood House Charter School to Join Boston Public Schools as a Necessary Party)	19-09934	June 14, 2019	131
Neighborhood House Charter School (Ruling on Neighborhood House Charter School's Motion to Dismiss)	19-09934	July 19, 2019	140
New Bedford Public Schools (Ruling on New Bedford Public Schools' Motion to Join the Massachusetts Department of Children and Families)	19-04571	January 31, 2019	7
Newton Public Schools (Ruling on Newton Public Schools' Motion to Join Medford Public Schools)	19-01552	January 8, 2019	3
Newton Public Schools (Decision)	19-05577	August 9, 2019	172
Newton Public Schools (Decision)	19-07771	October 1, 2019	222
North Middlesex Regional School District (Ruling on North Middlesex Regional School District's Partial Motion to Dismiss)	20-01219	August 8, 2019	169

Cumulative Decisions Reported–January–December 2019

Chronological Listing by Decision Date

Date	In Re:	Docket #	Page #
7-24-15	Natick Public Schools (Decision)	14-08860	197
1-08-19	Mansfield Public Schools (Ruling on Mansfield Public Schools' Motion to Dismiss or, in the Alternative, Statement of Counterclaims)	18-03315	1
1-08-19	Newton Public Schools (Ruling on Newton Public Schools' Motion to Join Medford Public Schools)	19-01552	3
1-17-19	Montachusett Regional Vocational Technical School (Ruling on Motion of Parent for Recusal of Hearing Officer)	19-04777	17
1-28-19	Montachusett Regional Vocational School District (Ruling on School's Amended Motion to Dismiss Construed as an Amended Motion for Summary Judgment)	19-04777	19
1-29-19	Quincy Public Schools (Ruling on Quincy Public Schools' Motion to Dismiss Parent's Hearing Request)	19-04761	5
1-31-19	New Bedford Public Schools (Ruling on New Bedford Public Schools' Motion to Join the Massachusetts Department of Children and Families)	19-04571	7
1-31-19	Peabody Public Schools (Ruling on Peabody Public School's Motion to Dismiss)	19-05404	9
2-07-19	Baystate Academy Public Charter School (Ruling on Parent Motion for Recusal)	18-12372	10
2-07-19	Lincoln-Sudbury Regional School District (Ruling on Motion for Summary Judgment)	19-05403	12
2-27-19	Maynard Public Schools (Decision)	19-00813	22
3-11-19	Lowell Public Schools (Ruling on Lowell Public Schools' Motion to Dismiss and Parents' Motion for Summary Decision)	19-05981	34
3-11-19	Nashoba Regional School District (Ruling on School's Motion to Join the Department of Mental Health)	19-06261	32
3-15-19	Boston Public Schools (Ruling on Cross-Motions for Summary Judgment)	19-00241	37
3-22-19	Whitman-Hanson Regional School District (Ruling on Parent's Motion to Dismiss)	19-08079	41
3-26-19	Easthampton Public Schools (Ruling on Parent's Motion for Recusal of Hearing Officer)	19-04761	43
3-28-19	Quabbin Regional School District (Decision)	19-02509	47
4-16-19	Whitman-Hanson Regional School District (Ruling on Parent's Second Motion to Dismiss)	19-08079	234
4-17-19	Montachusett Regional Vocational Technical School (Ruling on Montachusett Regional Vocational Technical School's Motion to Dismiss)	19-07993	57
5-06-19	Mendon-Upton Regional School District (Ruling on Parents' Motion to Allow Parent to Chaperone Field Trip)	19-07157	61
5-08-19	Falmouth Public Schools (Ruling on Falmouth Public Schools' Motion to Join the Department of Children and Families and the Department of Mental Health)	19-06369	64
5-17-19	Nashoba Regional School District (Decision)	18-10420	70
5-21-19	Whitman-Hanson Regional School District (Ruling on Parent's Motion to Dismiss; Motion for a Court Reporter for the Hearing; and Motion for Observation of Proposed Program)	19-08079	83
5-24-19	Middleton Public Schools (Ruling on Middleton Public Schools' Motion for Summary Judgment)	19-09931	86
6-03-19	Frammingham Public Schools (Decision)	19-05348	89
6-11-19	Whitman-Hanson Regional School District (Rulings on Parent's Motion to Recuse and Motion for Production of Documents)	19-08079	107
6-14-19	Neighborhood House Charter School (Ruling on Motion of Neighborhood House Charter School to Join Boston Public Schools as a Necessary Party)	19-09934	131
6-21-19	Pembroke Public Schools (Order & Ruling)	19-11125	110
6-27-19	Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Developmental Services and the Department of Children and Families)	19-08850	114
6-27-19	Pembroke Public Schools (Ruling on Parent's Motion to Dismiss Pembroke Public Schools' Request for Hearing)	19-11125	117
6-28-19	Lincoln-Sudbury Regional School District (Decision)	19-05403	120
7-01-19	Pembroke Public Schools (Ruling on Parent's Pre-Hearing Motion for Stay-Put on the Last Accepted IEP)	19-11125	133
7-08-19	Billerica Public Schools (Ruling on Cross Motions for Summary Judgment)	19-11391	136
7-09-19	Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Mental Health)	19-11053	138
7-19-19	Neighborhood House Charter School (Ruling on Neighborhood House Charter School's Motion to Dismiss)	19-09934	140
7-22-19	Easthampton Public Schools (Ruling on Easthampton Public Schools' Motion for Summary Judgment)	19-11816	143
7-26-19	Mystic Valley Regional Charter School (Decision)	19-07460	147
7-29-19	Brookline Public Schools (Ruling on Brookline Public Schools' Partial Motion to Dismiss)	19-12553	158
7-30-19	Easthampton Public Schools (Clarification Order)	19-11816	146
8-06-19	Fairhaven Public Schools (Decision)	19-04924	160
8-08-19	North Middlesex Regional School District (Ruling on North Middlesex Regional School District's Partial Motion to Dismiss)	20-01219	169
8-09-19	Newton Public Schools (Decision)	19-05577	172
8-19-19	Pentucket Regional School District (Decision)	19-04490	184
8-21-19	Northborough-Southborough Regional School District (Decision)	19-07008	191
8-29-19	Natick Public Schools (Decision)	17-12065	208

Cumulative Decisions Reported–January–December 2019

Numerical Listing by Docket Number

Docket #	In Re:	Page #
14-08860	Natick Public Schools (Decision)	197
17-12065	Natick Public Schools (Decision)	208
18-03315	Mansfield Public Schools (Ruling on Mansfield Public Schools' Motion to Dismiss or, in the Alternative, Statement of Counterclaims)	1
18-10420	Nashoba Regional School District (Decision)	70
18-12372	Baystate Academy Public Charter School (Ruling on Parent Motion for Recusal)	10
19-00241	Boston Public Schools (Ruling on Cross-Motions for Summary Judgment)	37
19-00813	Maynard Public Schools (Decision)	22
19-010123	Shrewsbury Public Schools (Decision)	255
19-01552	Newton Public Schools (Ruling on Newton Public Schools' Motion to Join Medford Public Schools)	3
19-02509	Quabbin Regional School District (Decision)	47
19-04490	Pentucket Regional School District (Decision)	184
19-04571	New Bedford Public Schools (Ruling on New Bedford Public Schools' Motion to Join the Massachusetts Department of Children and Families)	7
19-04761	Quincy Public Schools (Ruling on Quincy Public Schools' Motion to Dismiss Parent's Hearing Request)	5
19-04761	Easthampton Public Schools (Ruling on Parent's Motion for Recusal of Hearing Officer)	43
19-04777	Montachusett Regional Vocational Technical School (Ruling on Motion of Parent for Recusal of Hearing Officer)	17
19-04777	Montachusett Regional Vocational School District (Ruling on School's Amended Motion to Dismiss Construed as an Amended Motion for Summary Judgment)	19
19-04924	Fairhaven Public Schools (Decision)	160
19-05348	Framingham Public Schools (Decision)	89
19-05403	Lincoln-Sudbury Regional School District (Ruling on Motion for Summary Judgment)	12
19-05403	Lincoln-Sudbury Regional School District (Decision)	120
19-05404	Peabody Public Schools (Ruling on Peabody Public School's Motion to Dismiss)	9
19-05577	Newton Public Schools (Decision)	172
19-05981	Lowell Public Schools (Ruling on Lowell Public Schools' Motion to Dismiss and Parents' Motion for Summary Decision)	34
19-06261	Nashoba Regional School District (Ruling on School's Motion to Join the Department of Mental Health)	32
19-06261	Nashoba Regional School District (Ruling on School's Motion to Dismiss)	236
19-06369	Falmouth Public Schools (Ruling on Falmouth Public Schools' Motion to Join the Department of Children and Families and the Department of Mental Health)	64
19-06526	Ipswich Public Schools (Ruling on School Motion for Summary Judgment)	220
19-06526	Ipswich Public Schools (Decision)	227
19-07008	Northborough-Southborough Regional School District (Decision)	191
19-07157	Mendon-Upton Regional School District (Ruling on Parents' Motion to Allow Parent to Chaperone Field Trip)	61
19-07460	Mystic Valley Regional Charter School (Decision)	147
19-07771	Newton Public Schools (Decision)	222
19-07993	Montachusett Regional Vocational Technical School (Ruling on Montachusett Regional Vocational Technical School's Motion to Dismiss)	57
19-08079	Whitman-Hanson Regional School District (Ruling on Parent's Motion to Dismiss)	41
19-08079	Whitman-Hanson Regional School District (Ruling on Parent's Motion to Dismiss; Motion for a Court Reporter for the Hearing; and Motion for Observation of Proposed Program)	83
19-08079	Whitman-Hanson Regional School District (Rulings on Parent's Motion to Recuse and Motion for Production of Documents)	107
19-08079	Whitman-Hanson Regional School District (Decision)	231
19-08079	Whitman-Hanson Regional School District (Ruling on Parent's Second Motion to Dismiss)	234
19-08850	Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Developmental Services and the Department of Children and Families)	114
19-09691	Nashoba Regional School District (Decision)	244
19-09931	Middleton Public Schools (Ruling on Middleton Public Schools' Motion for Summary Judgment)	86
19-09934	Neighborhood House Charter School (Ruling on Motion of Neighborhood House Charter School to Join Boston Public Schools as a Necessary Party)	131
19-09934	Neighborhood House Charter School (Ruling on Neighborhood House Charter School's Motion to Dismiss)	140
19-11053	Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Mental Health)	138
19-11125	Pembroke Public Schools (Order & Ruling)	110
19-11125	Pembroke Public Schools (Ruling on Parent's Motion to Dismiss Pembroke Public Schools' Request for Hearing)	117
19-11125	Pembroke Public Schools (Ruling on Parent's Pre-Hearing Motion for Stay-Put on the Last Accepted IEP)	133
19-11391	Billerica Public Schools (Ruling on Cross Motions for Summary Judgment)	136
19-11816	Easthampton Public Schools (Ruling on Easthampton Public Schools' Motion for Summary Judgment)	143
19-11816	Easthampton Public Schools (Clarification Order)	146
19-12553	Brookline Public Schools (Ruling on Brookline Public Schools' Partial Motion to Dismiss)	158
20-00039	Bourne Public Schools (Decision)	268
20-01219	North Middlesex Regional School District (Ruling on North Middlesex Regional School District's Partial Motion to Dismiss)	169
20-03363	KIPP Academy (Ruling on the Department of Elementary and Secondary Education's Motion to Dismiss and Parent's Motion for Summary Judgment)	292
20-03363	KIPP Academy (Ruling on the Department of Elementary and Secondary Education's Motion to Dismiss and Parent's Motion for Summary Judgment)	292
20-03498	Manchester-Essex Regional School District (Ruling on Manchester-Essex Regional School District's Motion to Dismiss)	238

Cumulative Decisions Reported–January–December 2019

Alphabetical Listing by BSEA Hearing Officer

Hearing Officer	Docket #	Page #
Sara Berman		
Boston Public Schools (Ruling on Cross-Motions for Summary Judgment)	19-00241	37
Lincoln-Sudbury Regional School District (Ruling on Motion for Summary Judgment)	19-05403	12
Lincoln-Sudbury Regional School District (Decision)	19-05403	120
Montachusett Regional Vocational School District (Ruling on School's Amended Motion to Dismiss Construed as an Amended Motion for Summary Judgment)	19-04777	19
Montachusett Regional Vocational Technical School (Ruling on Motion of Parent for Recusal of Hearing Officer)	19-04777	17
Nashoba Regional School District (Decision)	18-10420	70
Neighborhood House Charter School (Ruling on Motion of Neighborhood House Charter School to Join Boston Public Schools as a Necessary Party)	19-09934	131
Neighborhood House Charter School (Ruling on Neighborhood House Charter School's Motion to Dismiss)	19-09934	140
Lindsay Byrne		
Baystate Academy Public Charter School (Ruling on Parent Motion for Recusal)	18-12372	10
Billerica Public Schools (Ruling on Cross Motions for Summary Judgment)	19-11391	136
Fairhaven Public Schools (Decision)	19-04924	160
Ipswich Public Schools (Ruling on School Motion for Summary Judgment)	19-06526	220
Ipswich Public Schools (Decision)	19-06526	227
Nashoba Regional School District (Ruling on School's Motion to Join the Department of Mental Health)	19-06261	32
Nashoba Regional School District (Ruling on School's Motion to Dismiss)	19-06261	236
Natick Public Schools (Decision)	17-12065	208
Newton Public Schools (Ruling on Newton Public Schools' Motion to Join Medford Public Schools)	19-01552	3
Northborough-Southborough Regional School District (Decision)	19-07008	191
Peabody Public Schools (Ruling on Peabody Public School's Motion to Dismiss)	19-05404	9
Rosa I. Figueroa		
Bourne Public Schools (Decision)	20-00039	268
Brookline Public Schools (Ruling on Brookline Public Schools' Partial Motion to Dismiss)	19-12553	158
Easthampton Public Schools (Ruling on Parent's Motion for Recusal of Hearing Officer)	19-04761	43
Easthampton Public Schools (Ruling on Easthampton Public Schools' Motion for Summary Judgment)	19-11816	143
Easthampton Public Schools (Clarification Order)	19-11816	146
Manchester-Essex Regional School District (Ruling on Manchester-Essex Regional School District's Motion to Dismiss)	20-03498	238
Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Developmental Services and the Department of Children and Families)	19-08850	114
Montachusett Regional Vocational Technical School (Ruling on Montachusett Regional Vocational Technical School's Motion to Dismiss)	19-07993	57
Pembroke Public Schools (Order & Ruling)	19-11125	110
Pembroke Public Schools (Ruling on Parent's Motion to Dismiss Pembroke Public Schools' Request for Hearing)	19-11125	117
Pembroke Public Schools (Ruling on Parent's Pre-Hearing Motion for Stay-Put on the Last Accepted IEP)	19-11125	133
Quincy Public Schools (Ruling on Quincy Public Schools' Motion to Dismiss Parent's Hearing Request)	19-04761	5
Raymond Oliver		
Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Mental Health)	19-11053	138
Pentucket Regional School District (Decision)	19-04490	184
Catherine M. Putney-Yaceshyn		
Maynard Public Schools (Decision)	19-00813	22
Nashoba Regional School District (Decision)	19-09691	244
Natick Public Schools (Decision)	14-08860	197
Newton Public Schools (Decision)	19-05577	172
Newton Public Schools (Decision)	19-07771	222
Quabbin Regional School District (Decision)	19-02509	47
Amy M. Reichbach		
Falmouth Public Schools (Ruling on Falmouth Public Schools' Motion to Join the Department of Children and Families and the Department of Mental Health)	19-06369	64
Framingham Public Schools (Decision)	19-05348	89
KIPP Academy (Ruling on the Department of Elementary and Secondary Education's Motion to Dismiss and Parent's Motion for Summary Judgment)	20-03363	292
KIPP Academy (Ruling on the Department of Elementary and Secondary Education's Motion to Dismiss and Parent's Motion for Summary Judgment)	20-03363	292
Lowell Public Schools (Ruling on Lowell Public Schools' Motion to Dismiss and Parents' Motion for Summary Decision)	19-05981	34
Mansfield Public Schools (Ruling on Mansfield Public Schools' Motion to Dismiss or, in the Alternative, Statement of Counterclaims)	18-03315	1
Mendon-Upton Regional School District (Ruling on Parents' Motion to Allow Parent to Chaperone Field Trip)	19-07157	61
Middleton Public Schools (Ruling on Middleton Public Schools' Motion for Summary Judgment)	19-09931	86
Mystic Valley Regional Charter School (Decision)	19-07460	147

Cumulative Decisions Reported–January-December 2019
Alphabetical Listing by Municipality / Regional School District

Baystate Academy	
Baystate Academy Public Charter School (Ruling on Parent Motion for Recusal)	10
Billerica	
Billerica Public Schools (Ruling on Cross Motions for Summary Judgment)	136
Boston	
Boston Public Schools (Ruling on Cross-Motions for Summary Judgment)	37
Bourne	
Bourne Public Schools (Decision)	268
Brookline	
Brookline Public Schools (Ruling on Brookline Public Schools' Partial Motion to Dismiss)	158
Easthampton	
Easthampton Public Schools (Ruling on Parent's Motion for Recusal of Hearing Officer)	43
Easthampton Public Schools (Clarification Order)	146
Easthampton Public Schools (Ruling on Easthampton Public Schools' Motion for Summary Judgment)	143
Fairhaven	
Fairhaven Public Schools (Decision)	160
Falmouth	
Falmouth Public Schools (Ruling on Falmouth Public Schools' Motion to Join the Department of Children and Families and the Department of Mental Health)	64
Framingham	
Framingham Public Schools (Decision)	89
Ipswich	
Ipswich Public Schools (Decision)	227
Ipswich Public Schools (Ruling on School Motion for Summary Judgment)	220
KIPP	
KIPP Academy (Ruling on the Department of Elementary and Secondary Education's Motion to Dismiss and Parent's Motion for Summary Judgment)	292
KIPP Academy	
KIPP Academy (Ruling on the Department of Elementary and Secondary Education's Motion to Dismiss and Parent's Motion for Summary Judgment)	292
Lincoln-Sudbury	
Lincoln-Sudbury Regional School District (Ruling on Motion for Summary Judgment)	12
Lincoln-Sudbury Regional School District (Decision)	120
Lowell	
Lowell Public Schools (Ruling on Lowell Public Schools' Motion to Dismiss and Parents' Motion for Summary Decision)	34
Manchester-Essex	
Manchester-Essex Regional School District (Ruling on Manchester-Essex Regional School District's Motion to Dismiss)	238
Mansfield	
Mansfield Public Schools (Ruling on Mansfield Public Schools' Motion to Dismiss or, in the Alternative, Statement of Counterclaims)	1
Maynard	
Maynard Public Schools (Decision)	22
Mendon-Upton	
Mendon-Upton Regional School District (Ruling on Parents' Motion to Allow Parent to Chaperone Field Trip)	61
Middleborough	
Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Developmental Services and the Department of Children and Families)	114
Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Mental Health)	138
Middleton	
Middleton Public Schools (Ruling on Middleton Public Schools' Motion for Summary Judgment)	86
Montachusett	
Montachusett Regional Vocational School District (Ruling on School's Amended Motion to Dismiss Construed as an Amended Motion for Summary Judgment)	19
Montachusett Regional Vocational Technical School (Ruling on Montachusett Regional Vocational Technical School's Motion to Dismiss)	57
Montachusett Regional Vocational Technical School (Ruling on Motion of Parent for Recusal of Hearing Officer)	17
Mystic Valley Regional Charter School	
Mystic Valley Regional Charter School (Decision)	147
Nashoba	
Nashoba Regional School District (Ruling on School's Motion to Join the Department of Mental Health)	32
Nashoba Regional School District (Decision)	70
Nashoba Regional School District (Decision)	244
Nashoba Regional School District (Ruling on School's Motion to Dismiss)	236
Natick	
Natick Public Schools (Decision)	197
Natick Public Schools (Decision)	208
Neighborhood House Charter School	
Neighborhood House Charter School (Ruling on Motion of Neighborhood House Charter School to Join Boston Public Schools as a Necessary Party)	131

Cumulative Subject Matter Index–January-December 2019

Advocates

Parental Representation

BSEA Jurisdiction

Attorney's Fees

Department of Children and Families (DCF)

Department of Developmental Services (Formerly DMR)

Department of Mental Health

Parental Authority

Records Request

Settlement Agreement

Statute of Limitations

Transportation

Charter Schools

Special-Education Services

Unilateral Placement

Compensatory Services

Speech/Language Therapy

Transition Services

Consent/Parental

Assessment

Department of Education

Joinder

Discipline

Manifestation Determination

Eligibility Criteria/Disabilities

ADD/ADHD

Autism/PDD

Down's Syndrome

Dyslexia

Food Allergy

Intellectual Impairment

Language-Based Learning Disability

Nonverbal Learning Disorder

Specific Learning Disability

Evaluation (see also Team Evaluation; Re-evaluation; Evaluation, Independent)

Refusal of Parent to Allow

Evaluation, Independent

Funding

Evaluators

Recommendations

Expert Testimony

Quality of Expert Testimony

Free Appropriate Public Education (FAPE)

Absences/Attendance

Related Services

Safety

Graduation

Determination of Time to Graduate

Hearing Officer

Bias

Recusal

Individualized Education Program

Compliance

Failure to Provide

Meaningful Benefit

Modification

Program Design

Social and Emotional Needs

Transition Plan

Least Restrictive Environment

Effective Progress

Inclusion Model

Language-Based Learning Disability

Mental Retardation

Residential Placement

Local Education Agency

Responsible Community

MCAS

Post-Secondary Placements

Metco

Responsibility for SPED Services

Parental Involvement

Access to Records

Pro Se Litigation

Placement

Autism-PDD

Stay-Put Provision

Unilateral Placement

Practice and Procedure

Clarification of Legal Standard

Collateral Estoppel

Hearing Participants

Hearing Postponement

Joinder

Mootness

Motion for Substitute Consent

Motion to Dismiss

Necessary Parties

CUMULATIVE SUBJECT MATTER INDEX–JANUARY-DECEMBER 2019

Production of Documents
Res Judicata
Standing
Statute of Limitations
Summary Judgment

Re-evaluation
Consent

Related Services
Extracurricular Activities
Transition Planning and Services
Transportation Services

Residency Dispute or Assignment
DOE/DESE Assignments
Out-of-State Parents

Section 504 Accommodation Plan
Allergies/Asthma

Team Evaluation (see also Re-evaluation; Evaluation)
Predetermination
Procedural Violations

Transportation
Related Services

ABRIDGED SAMPLE

Cumulative Subject Matter Digest–January–December 2019

Advocates

Parental Representation

Rejecting a request that the evidentiary hearing be conducted via videoconferencing, the Hearing Officer ordered Parent's Advocate to be present at the hearing. Hearing Officer found that to allow otherwise would unfairly prejudice the Parent and her 19-year-old son and make the forum difficult to manage. *In Re: Pembroke Public Schools (Order & Ruling)*, 25 MSER 110 (2019).

BSEA Jurisdiction

Attorney's Fees

Denying a district's counterclaim seeking attorneys' fees along with a motion to dismiss, Hearing Officer held that the BSEA had no jurisdiction where the IDEA limits the authority to award attorneys' fees to the federal district court. *In Re: Mansfield Public Schools (Ruling on Mansfield Public Schools' Motion to Dismiss or, in the Alternative, Statement of Counterclaims)*, 25 MSER 1 (2019).

Department of Children and Families (DCF)

Where Student was not, and had never had been, a client of the Department of Children and Families, the Hearing Officer rejected a district's motion for joinder. As a result of an interim policy, the agency had been involved in funding an out-of-home placement but had no other involvement with the child. Parents had filed a hearing request seeking a residential placement for their 16-year-old son with autism, disruptive mood dysregulation disorder, and epilepsy and were seeking a residential placement for him after he had been hospitalized and placed in a residential facility for a 45-day evaluation. *In Re: Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Developmental Services and the Department of Children and Families)*, 25 MSER 114 (2019).

Hearing Officer allowed a district's motion to join DCF to Parents' hearing request. Parents were seeking a residential therapeutic placement for their 10-year-old son with bipolar disorder who was about to be discharged from an acute treatment program as insurance funding was running out. Parents had a Child Requiring Assistance Petition pending in the Juvenile Court which could result in DCF taking custody. *In Re: Falmouth Public Schools (Ruling on Falmouth Public Schools' Motion to Join the Department of Children and Families and the Department of Mental Health)*, 25 MSER 64 (2019).

Hearing Officer Amy M. Reichbach allowed the New Bedford Public Schools' motion to join DCF to the hearing request filed by Parents seeking a residential placement for their 17-year-old son diagnosed with Reactive Attachment Disorder and Borderline Personality Disorder. Parents sought a residential placement after the Team had determined the Student was ineligible for special education services and DCF requested he be placed in a group home and attend public school within the district. At the time of the ruling, DCF had taken temporary custody of the teenager and the Hearing Officer determined that it was too early to tell if the district alone will be able to provide complete relief if a residential placement is required. *In Re: New Bedford Public Schools (Ruling on New Bedford Public Schools' Motion to Join the Massachusetts Department of Children and Families)*, 25 MSER 7 (2019).

Department of Developmental Services (Formerly DMR)

On a motion filed by the Middleborough Public Schools to join DDS to a hearing request, Hearing Officer Rosa I. Figueroa found that DDS was a necessary party and allowed the district's motion. The Parents of a 16-year-old boy with autism, disruptive mood dysregulation disorder, and epilepsy had filed a hearing request seeking a residential placement for him

after he had been hospitalized and placed in a residential facility for a 45-day evaluation. DDS had facilitated his placement at the program and provided in-home supports to him upon his return to a day program at public school. The district was able to show that DDS could be found responsible to continue offering in-home supports or to provide a residential placement. *In Re: Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Developmental Services and the Department of Children and Families)*, 25 MSER 114 (2019).

Department of Mental Health

Hearing Officer found that the BSEA had no jurisdiction to order the joinder of the Department of Mental Health where the agency had previously determined that a 14-year-old girl with a history of psychiatric hospitalizations was not eligible for services. The district had sought the agency's joinder to a Parent's hearing request seeking a residential placement at a Justice Resource Institute facility for her 14-year-old daughter. The teenager had been participating in a DMH therapeutic afterschool program and the Hearing Officer ruled that this did not establish jurisdiction in the absence of eligibility. *In Re: Middleborough Public Schools (Ruling on Middleborough Public Schools' Motion to Join the Department of Mental Health)*, 25 MSER 138 (2019).

Hearing Officer Amy M. Reichbach denied a motion to join DMH to Parents' hearing request seeking a residential therapeutic placement for their 10-year-old son with bipolar disorder. The child was in an acute treatment program and was about to be discharged as insurance funding was running out. In rejecting the joinder of DMH, the Hearing Officer relied on its determination that the child did not meet its eligibility criteria and held that the BSEA did not have jurisdiction to overturn a final decision of the agency. *In Re: Falmouth Public Schools (Ruling on Falmouth Public Schools' Motion to Join the Department of Children and Families and the Department of Mental Health)*, 25 MSER 64 (2019).

Over the objection of DMH, Hearing Officer granted a district's motion to join the agency to a hearing request filed by Parents of a 14-year-old girl seeking a therapeutic residential placement for their daughter. The teenager was about to be discharged from a community based acute treatment program at Franciscan Hospital and Parents had recently signed a consent for DMH services. The Hearing Officer found that the limited record supported the position of the district and the Parents that the teenager would not be able to access special education services without intensely therapeutic residential supports. *In Re: Nashoba Regional School District (Ruling on School's Motion to Join the Department of Mental Health)*, 25 MSER 32 (2019).

Parental Authority

Where an abuse prevention order issued by the court prevented the district from providing Parent with access to her son's educational records, the Hearing Officer rejected Parent's claims of procedural violations as a matter of law and noted that the dispute regarding access must be resolved by the courts, not the BSEA. *In Re: Montachusett Regional Vocational School District (Ruling on School's Amended Motion to Dismiss Construed as an Amended Motion for Summary Judgment)*, 25 MSER 19 (2019).

Records Request

Hearing Officer rejected Boston's contention that a records request dispute was moot and granted Parent's motion with respect to her claim that the district had failed to provide her with a "complete and accurate copy" of her child's records within the statutory and regulatory timelines. The district did not complete the process of forwarding the records until 19 months after the request was made. Finding no BSEA jurisdiction, the Hearing Officer, however, denied Parent's request that the district be ordered to make systemic changes to its records retention and retrieval pro-

CUMULATIVE SUBJECT MATTER DIGEST–JANUARY–DECEMBER 2019

cess and granted Boston's motion to dismiss this claim. *In Re: Boston Public Schools (Ruling on Cross-Motions for Summary Judgment)*, 25 MSER 37 (2019).

Settlement Agreement

Despite the existence of a settlement agreement governing the provision of assistive technology services, the Hearing Officer declined to grant the district's partial motion to dismiss Parents' claims that it had not provided the assistive technology services required by the agreement and their child's IEP. The Hearing Officer ruled that the Parents' pleadings had articulated a sufficient basis to plausibly suggest a cause of action entitling them to relief. *In Re: Brookline Public Schools (Ruling on Brookline Public Schools' Partial Motion to Dismiss)*, 25 MSER 158 (2019).

Statute of Limitations

Finding that Parent's claims were beyond the two-year statute of limitations for both IDEA and Section 504 claims, Hearing Officer dismissed Parent's hearing request alleging that the Manchester-Essex Regional School District had denied her 16-year-old daughter a FAPE when it failed to place her on a Section 504 plan during elementary and middle school. The Hearing Officer rejected the Student's assertions that the claim was hers and should be tolled until she reaches the age of majority. The Hearing Officer also found no merit in the claim that an alleged failure of OCR to provide notice that a BSEA hearing request should have been filed after a complaint was settled triggered any requirement to toll the statute. The Student had left the district in December 2015 and one of her Section 504 claims involved the district's decision to exclude the Student from a Halloween dance in 2016. *In Re: Manchester-Essex Regional School District (Ruling on Manchester-Essex Regional School District's Motion to Dismiss)*, 25 MSER 238 (2019).

Transportation

Hearing Officer found *pro se* Parent's hearing request made out a sufficient claim and established BSEA jurisdiction where it alleged that the district had failed to offer a FAPE to her daughter when it refused to provide transportation. The district had argued that the Student, who was attending a district school through the School Choice program, was not entitled to transportation under M.G.L. c. 76, § 12B. *In Re: Peabody Public Schools (Ruling on Peabody Public School's Motion to Dismiss)*, 25 MSER 9 (2019).

Charter Schools

Special-Education Services

Hearing Officer Amy M. Reichbach ruled that a hearing was required in order to determine whether KIPP Academy in Lynn had properly placed a Student with an emotional disability in a substantially separate therapeutic program in the Marblehead Public Schools and whether the placement could continue and/or serve as a stay-put placement. KIPP asserted it had placed the Student at Marblehead's TIDES program only after Lynn's special education director was unresponsive and that it had received a waiver from DESE. For the 2019-2020 school year, Lynn proposed placement in an in-district, substantially separate therapeutic program although DESE had issued a second waiver to allow the Student remain in the TIDES program shortly after the beginning of the school year. The Hearing Officer found that material issues of fact remained and denied Parent's motion for summary judgment and DESE's motion to be dismissed as a party to the hearing request. *In Re: KIPP Academy (Ruling on the Department of Elementary and Secondary Education's Motion to Dismiss and Parent's Motion for Summary Judgment)*, 25 MSER 292 (2019).

Unilateral Placement

Hearing Officer denied the Neighborhood Charter Schools' motion to dismiss a Parent's hearing request with respect to claims seeking reimbursement and prospective placement of her 11-year-old daughter at the

Learning Prep School. The Hearing Officer held that the Parent's decision to unilaterally place her daughter in an out-of-district program did not automatically shift the responsibility to the Boston Public Schools. Such a shift can only be triggered by a determination of the charter school Team that an out-of-district placement is necessary to implement the IEP. Here, Neighborhood House had asserted that it could provide FAPE within a partial or full inclusion placement. *In Re: Neighborhood House Charter School (Ruling on Neighborhood House Charter School's Motion to Dismiss)*, 25 MSER 140 (2019).

Compensatory Services

Speech/Language Therapy

Where the logs maintained by the speech/language pathologist presented at the hearing established that the district failed to provide at least 42, 30-minute blocks of direct speech/language services and 15, 30-minute blocks of consultation over two school years, the Hearing Officer gave the Team 10 days to develop a plan for the delivery of compensatory services. *In Re: Shrewsbury Public Schools (Decision)*, 25 MSER 255 (2019).

Transition Services

Parents were not entitled to compensatory relief where District had proposed a series of IEPs for a young adult with a mild intellectual disability that called for placement in the ACHIEVE program designed to provide flexible, tailored educational, communication, and vocational services to students who have completed high school. *In Re: Natick Public Schools (Decision)*, 25 MSER 208 (2019).

Consent/Parental

Assessment

In the absence of parental consent for a three-year reevaluation, the Hearing Officer was unable to determine whether IEPs for a 17-year-old boy with an autism spectrum disorder provided FAPE. Hearing Officer ordered substitute consent and required the Team to begin the re-evaluation within 10 days of the issuance of her order. The district will have no obligation to propose home services if Parents decide to refuse a home assessment. *In Re: Shrewsbury Public Schools (Decision)*, 25 MSER 255 (2019).

Department of Education

Joinder

Denying DESE's motion to dismiss itself as a party, the Hearing Officer ruled that DESE must remain a party to a hearing request seeking to determine whether KIPP Academy in Lynn had properly placed a Student with an emotional disability in a substantially separate therapeutic program in the Marblehead Public Schools. Where KIPP had received waivers from DESE, the Hearing Officer found that the agency could bear responsibility for the Student missing the start of the 2019-2020 school year at TIDES and for any compensatory services that may be required. *In Re: KIPP Academy (Ruling on the Department of Elementary and Secondary Education's Motion to Dismiss and Parent's Motion for Summary Judgment)*, 25 MSER 292 (2019).

Discipline

Manifestation Determination

Parents were not entitled to any relief under the IDEA for claims contesting a district's determination that the discipline of their son for possession of a vape device and related paraphernalia was not a manifestation of his disabilities. The manifestation determination occurred after the Student had been suspended for nine days in a school year and did not meet the 10-day threshold required for triggering a right of appeal. *In Re: North*

CUMULATIVE SUBJECT MATTER DIGEST—JANUARY-DECEMBER 2019

Middlesex Regional School District (Ruling on North Middlesex Regional School District's Partial Motion to Dismiss), 25 MSER 169 (2019).

Eligibility Criteria/Disabilities**ADD/ADHD**

Finding that a 12-year-old boy diagnosed with severe ADHD, Other Specified Neurodevelopmental Disorder, and depression required a placement at the Learning Prep School in order to receive a FAPE, the Hearing Officer ordered the Nashoba Regional School District to reimburse Parents for the unilateral placement of their son for the 2019-2020 school year. While the partial inclusion program at the district's Middle Connections Program offered many of the same supports and approaches as Learning Prep, the program required participation in classrooms with over 20 students in general education settings for science and social studies without appropriate supports that would allow the Student to access the material. The evidence established that the Student required a small, language-based setting for all academics given his processing speed, working memory, learning disabilities, and anxiety. Under an earlier settlement agreement between the district and the Parents, the middle schooler had been attending Learning Prep for two years prior to the dispute. *In Re:Nashoba Regional School District (Decision), 25 MSER 244 (2019).*

Autism/PDD

Hearing Officer ruled that although the Shrewsbury Public Schools did not commit any procedural errors, it had failed to implement accepted IEPs for a minimally verbal 17-year-old boy with an autism spectrum disorder and global developmental delays. The logs maintained by the speech/language pathologist presented at the hearing established that the district failed to provide at least 42, 30-minute blocks of direct speech/language services and 15, 30-minute blocks of consultation over two school years. The Hearing Officer gave the Team 10 days to develop a plan for the delivery of compensatory services. With respect to whether the IEPs proposed by the district but not fully accepted by the Parents provided FAPE, the Hearing Officer ruled that she had insufficient information to make a determination due to the Parents' failure to consent to a reevaluation and provided for substitute consent with the district to begin the reevaluation within 10 days. *In Re:Shrewsbury Public Schools (Decision), 25 MSER 255 (2019).*

A 17-year-old Student with an autism spectrum disorder and ADHD did not require participation in sports to be included in his IEP in order to receive FAPE. Where the teenager was in a full-inclusion placement and participated in the football and wrestling teams, the Hearing Officer found there was no evidence that participation in sports was a special education need for him and no customized transportation to support it was required. The Hearing Officer concluded that the transportation Parents requested was for their own convenience and was not a necessary disability-related service. The district provided the young man with regular transportation from home to the Masconomet Regional High School for the 7:30 a.m. start and from school to home in the afternoons and reimbursed Parents for any transportation they provided in lieu of the district-provided transportation. *In Re:Ipswich Public Schools (Decision), 25 MSER 227 (2019).*

Pro se Parents failed to meet their burden of proof to show that the IEP proposed by the Northborough-Southborough Regional School District for their 16-year-old son with autism and a history of anxiety and school non-attendance did not provide a FAPE. Hearing Officer Lindsay Byrne found that the district's proposed IEP and placement in its substantially separate RISE program at Algonquin High School provided the flexible scheduling and therapeutic supports necessary for the teenager's transition to a school setting. Parents had advocated for public funding of a private, non-special education day placement for their son. *In Re:Northborough-Southborough Regional School District (Decision), 25 MSER 191 (2019).*

The IEPs proposed by the Newton Public Schools for an 18-year-old Student with autism, anxiety, and depression provided FAPE in the least restrictive environment and Parents were not entitled to reimbursement for the unilateral residential placement of their son at the Franklin Academy for his last two years of high school. Finding there were no evidence to support the need for a residential placement, the Hearing Officer noted that after learning that the Student had been hospitalized, Newton had increased the level of therapeutic supports in the IEPs and offered a placement in an out-of-district or private day school. *In Re:Newton Public Schools (Decision), 25 MSER 172 (2019).*

Hearing Officer Lindsay Byrne held that the IEP proposed by the Fairhaven Public Schools failed to provide FAPE for a 15-year-old Student with autism and an intellectual impairment and ordered the district to place him at the Riverside School for the 2019-2020 school year. Fairhaven had proposed a partial inclusion program at the public high school for the teenager consistent with the previous year's IEP that the Hearing Officer determined to be woefully inadequate in both design and execution. The district's proposed IEP failed to incorporate the programming recommendations made by both the Parents' and its own experts. The record established that the district had done nothing to advance the social skills and social pragmatic language skills which were crucial to his ability to access the curriculum and make progress toward any academic goals. The Hearing Officer also noted that the 1:1 paraprofessional charged with adapting curriculum for the Student had no certifications or formal training in autism education or applied behavioral analysis. *In Re:Fairhaven Public Schools (Decision), 25 MSER 160 (2019).*

A regional charter school's procedural errors did not result in a denial of FAPE to a 19-year-old Student with autism who had made progress in his IEP goals, passed his MCAS tests, and met all requirements for a June 2019 graduation. The Parents disputed the school's decision not to provide their son with a post-graduation year of transition services. The Team, after initially believing it was required to provide him with an additional year once the Parents had rejected the graduation date, had reconvened the Team to reconsider whether transition services were necessary beyond June but failed to provide Parents with prior written notice of the change. *In Re:Mystic Valley Regional Charter School (Decision), 25 MSER 147 (2019).*

Hearing Officer held that a regional school district had provided FAPE to a 21-year-old with autism when it offered an IEP with a placement in its Transitions Program. Objecting to the lack of focused, progressive opportunities for their daughter to progress in her chosen occupation, baking and culinary arts, Parents had sought placement at a LABBB Collaborative program for their daughter. The district's Transitions Program had placed the young woman at job sites including a corporate cafeteria, a Meals on Wheels program, and assisted living centers. The program had also facilitated her establishment as a high school snack vendor. Although the Hearing Officer found the Parents' frustration that their daughter had not had more opportunities for instruction and experience in cooking and baking understandable, she noted that the IDEA did not require an ideal experience. The Hearing Officer did, however, order the district to arrange immediately for a comprehensive transitional evaluation including a thorough assessment of the Student's current vocational skills, needs, and interests, particularly in cooking and baking. *In Re:Nashoba Regional School District (Decision), 25 MSER 70 (2019).*

Down's Syndrome

Hearing Officer found that an IEP proposed by the Quabbin Regional School District for a 13-year-old sixth grader with Down Syndrome was reasonably calculated to provide FAPE in the least restrictive environment. The district had proposed a partial inclusion placement with inclusion in the general education classroom for social studies, science, lunch, recess, homeroom, and specials with support. The Hearing Officer rejected Parents' contention that their son should receive a full-inclusion placement with a one-to-one aide and disregarded the testimony of the in-

Cumulative BSEA Decisions Cited–January–December 2019

- Agawam Public Schools, BSEA #1403554, 19 MSER 323 (2013)**
In Re: Falmouth Public Schools, 25 MSER 68 (2019)
- Agawam Public Schools, BSEA #1403554, 20 MSER 1 (2014)**
In Re: Middleborough Public Schools, 25 MSER 116 (2019)
- Amherst Public Schools, BSEA #11-6786, 18 MSER 326 (2012)**
In Re: Neighborhood House Charter School, 25 MSER 142 (2019)
- Attleboro Public Schools, BSEA #09-6759, 15 MSER 348 (2009)**
In Re: Easthampton Public Schools, 25 MSER 44 (2019)
In Re: Montachusett Regional Vocational Technical School, 25 MSER 17 (2019)
- Auburn Public Schools, BSEA #02-0983, 8 MSER 143 (2002)**
In Re: Middleborough Public Schools, 25 MSER 115 (2019)
- Berkshire Hills Regional School District, BSEA #1403852, 22 MSER 45 (2016)**
In Re: Nashoba Regional School District, 25 MSER 33 (2019)
- Boston Public Schools, BSEA #02-4553 (2002)**
In Re: Middleborough Public Schools, 25 MSER 115 (2019)
- Boston Public Schools, BSEA #06-5402, 12 MSER 209 (2006)**
In Re: Middleborough Public Schools, 25 MSER 139 (2019)
- Boston Public Schools, BSEA #10-2417, 16 MSER 364 (2010)**
In Re: Boston Public Schools, 25 MSER 39 (2019)
In Re: Lincoln-Sudbury Regional School District and Boston Public Schools, 25 MSER 13 (2019)
- Boston Public Schools, BSEA #1900241, 25 MSER 37 (2019)**
In Re: Ipswich Public Schools, 25 MSER 221 (2019)
- Bridgewater-Raynham Regional School District, BSEA #06-0256, 12 MSER 4 (2006)**
In Re: Billerica Public Schools, 25 MSER 137 (2019)
In Re: Boston Public Schools, 25 MSER 39 (2019)
In Re: Lincoln-Sudbury Regional School District and Boston Public Schools, 25 MSER 13 (2019)
- Bridgewater-Raynham Regional School District, BSEA #11-6444, 17 MSER 91 (2011)**
In Re: Middleton Public Schools, 25 MSER 88 (2019)
- Bridgewater-Raynham Regional School District, BSEA #1303762, 19 MSER 17 (2013)**
In Re: Boston Public Schools, 25 MSER 39 (2019)
In Re: Easthampton Public Schools, 25 MSER 144 (2019)
In Re: Lincoln-Sudbury Regional School District and Boston Public Schools, 25 MSER 13 (2019)
- Brockton Public Schools, BSEA #11-0374, 16 MSER 367 (2010)**
In Re: Baystate Academy Public Charter School, 25 MSER 11 (2019)
In Re: Easthampton Public Schools, 25 MSER 44 (2019)
In Re: Montachusett Regional Vocational Technical School, 25 MSER 17 (2019)
- CBDE School District, BSEA #10-6854, 17 MSER 43 (2011)**
In Re: Nashoba Regional School District, 25 MSER 237 (2019)
- Christa McAuliffe Regional Public Charter School, BSEA #1300761, 19 MSER 137 (2013)**
In Re: Natick Public Schools, 25 MSER 208 (2019)
- Christa McAuliffe Regional Public Charter School, BSEA #1402591, 19 MSER 295 (2013)**
In Re: Natick Public Schools, 25 MSER 208 (2019)
- Christa McAuliffe Regional Public Charter School, BSEA #1404110, 20 MSER 81 (2014)**
In Re: Natick Public Schools, 25 MSER 208 (2019)
- Dennis-Yarmouth Regional School District, BSEA #1607923, 22 MSER 256 (2016)**
In Re: Manchester-Essex Regional School District, 25 MSER 242 (2019)
In Re: Manchester-Essex Regional School District, 25 MSER 240 (2019)
- Duxbury Public Schools, BSEA #08-3479, 14 MSER 353 (2008)**
In Re: Baystate Academy Public Charter School, 25 MSER 11 (2019)
- Duxbury Public Schools, BSEA #08-3479, 14 MSER 363 (2008)**
In Re: Easthampton Public Schools, 25 MSER 44 (2019)
In Re: Montachusett Regional Vocational Technical School, 25 MSER 17 (2019)
- Easthampton Public Schools, BSEA #1911816, 25 MSER 143 (2019)**
In Re: Easthampton Public Schools, 25 MSER 146 (2019)
- Fall River Public Schools, BSEA #00-0771, 5 MSER 183 (1999)**
In Re: Manchester-Essex Regional School District, 25 MSER 243 (2019)
- Falmouth Public Schools, BSEA #1906369, 25 MSER 64 (2019)**
In Re: Middleborough Public Schools, 25 MSER 139 (2019)
- Framingham Public Schools, BSEA #1605247, 22 MSER 137 (2016)**
In Re: Nashoba Regional School District, 25 MSER 80 (2019)
- Greater New Bedford Regional Voc. Tech., BSEA #1308227, 19 MSER 220 (2013)**
In Re: Boston Public Schools, 25 MSER 40 (2019)
- Harwich Public Schools, BSEA #08-1670, 14 MSER 22 (2008)**
In Re: Montachusett Regional Vocational Technical School, 25 MSER 59 (2019)
- Lexington Public Schools, BSEA #1600388, 23 MSER 111 (2017)**
In Re: Nashoba Regional School District, 25 MSER 82 (2019)
- Longmeadow Public Schools, BSEA #07-2866, 14 MSER 249 (2008)**
In Re: Brookline Public Schools, 25 MSER 159 (2019)
- Lowell Public Schools, 107 LRP 655543 (2007)**
In Re: Middleborough Public Schools, 25 MSER 116 (2019)
- Ludlow Public Schools, BSEA #1509319, 21 MSER 209 (2015)**
In Re: Montachusett Regional Vocational Technical School, 25 MSER 59 (2019)
- Lunenburg Public Schools, BSEA #05-0799, 10 MSER 478 (2004)**
In Re: Middleborough Public Schools, 25 MSER 116 (2019)
- Lynn Public Schools, BSEA #1500643, 21 MSER 53 (2015)**
In Re: Brookline Public Schools, 25 MSER 159 (2019)
- Mansfield Public Schools, BSEA #1803315, 25 MSER 1 (2019)**
In Re: Ipswich Public Schools, 25 MSER 221 (2019)
- Marblehead Public Schools, BSEA #02-2828, 8 MSER 84 (2002)**
In Re: Easthampton Public Schools, 25 MSER 44 (2019)
In Re: Montachusett Regional Vocational Technical School, 25 MSER 17 (2019)
- Marlborough Public Schools, BSEA #10-1450, 15 MSER 381 (2009)**
In Re: Newton Public Schools, 25 MSER 226 (2019)
- Marlborough Public Schools, BSEA #11-3650, 17 MSER 201 (2011)**
In Re: Brookline Public Schools, 25 MSER 159 (2019)
- Medfield Public Schools, BSEA #07-7260, 13 MSER 365 (2007)**
In Re: Framingham Public Schools, 25 MSER 105 (2019)
- Medford Public Schools, BSEA #01-3941, Ruling on Motion to Join DMH and DMR (2002)**
In Re: Middleborough Public Schools, 25 MSER 116 (2019)
- Montachusett Regional Vocational Technical School, Docket No. 1907993, 25 MSER 19 (2019)**
In Re: Montachusett Regional Vocational Technical School, 25 MSER 57 (2019)
- Natick Public Schools, BSEA #11-3131, 17 MSER 55 (2011)**
In Re: Nashoba Regional School District, 25 MSER 80 (2019)
In Re: Natick Public Schools, 25 MSER 208 (2019)
- Natick Public Schools, BSEA #1408860, 25 MSER 197 (2015)**
In Re: Natick Public Schools, 25 MSER 208 (2019)
- Newton Public Schools, BSEA #1810148, 24 MSER 161 (2018)**
In Re: Billerica Public Schools, 25 MSER 137 (2019)
In Re: Ipswich Public Schools, 25 MSER 221 (2019)
- Norfolk County Agricultural High School, BSEA #06-0390, 11 MSER 233 (2005)**
In Re: Montachusett Regional Vocational Technical School, 25 MSER 59 (2019)
In Re: Neighborhood House Charter School, 25 MSER 140 (2019)
In Re: Quincy Public Schools, 25 MSER 6 (2019)
- Norton Public Schools, BSEA #1609348, 22 MSER 212 (2016)**
In Re: Baystate Academy Public Charter School, 25 MSER 11 (2019)
- Norwood Public Schools, BSEA #06-0214, 11 MSER 161 (2005)**
In Re: Brookline Public Schools, 25 MSER 159 (2019)

Cumulative Cases Cited–January–December 2019

- A. M. v. Monrovia Unified School District, 627 F.3d 773 (9th Cir. 2010)**
 In Re: Mystic Valley Regional Charter School, 25 MSER 157 (2019)
 In Re: Shrewsbury Public Schools, 25 MSER 267 (2019)
- AccuSoft Corp. v. Palo, 237 F.3d 31 (1st Cir. 2001)**
 In Re: Brookline Public Schools, 25 MSER 159 (2019)
- Allen v. McCurry, 449 U.S. 90 (1980)**
 In Re: Montachusett Regional Vocational Technical School, 25 MSER 60 (2019)
 In Re: Montachusett Regional Vocational Technical School, 25 MSER 59 (2019)
- Amanda J. v. Clark County School District, 267 F.3d 877 (9th Cir. 2001)**
 In Re: Mystic Valley Regional Charter School, 25 MSER 155 (2019)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)**
 In Re: Billerica Public Schools, 25 MSER 137 (2019)
 In Re: Boston Public Schools, 25 MSER 39 (2019)
 In Re: Easthampton Public Schools, 25 MSER 144 (2019)
 In Re: Ipswich Public Schools, 25 MSER 221 (2019)
 In Re: Kipp Academy et al., 25 MSER 297 (2019)
 In Re: Lincoln-Sudbury Regional School District and Boston Public Schools, 25 MSER 13 (2019)
 In Re: Lowell Public Schools, 25 MSER 36 (2019)
 In Re: Middleton Public Schools, 25 MSER 87 (2019)
- Apparel Art Int'l., Inc. v. Amertex Enterprises, Ltd., 48 F.3d 576 (1st Cir. 1995)**
 In Re: Montachusett Regional Vocational Technical School, 25 MSER 60 (2019)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)**
 In Re: Billerica Public Schools, 25 MSER 137 (2019)
 In Re: Montachusett Regional Vocational Technical School, 25 MSER 59 (2019)
 In Re: Nashoba Regional School District, 25 MSER 237 (2019)
 In Re: Neighborhood House Charter School, 25 MSER 140 (2019)
 In Re: Peabody Public School, 25 MSER 9 (2019)
- Baisden v. Secondary Schools, Activities Commission, 568 S.E. 2d 32 (W. Va. 2002)**
 In Re: Nashoba Regional School District, 25 MSER 238 (2019)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)**
 In Re: Brookline Public Schools, 25 MSER 159 (2019)
 In Re: Lowell Public Schools, 25 MSER 35 (2019)
 In Re: Manchester-Essex Regional School District, 25 MSER 241 (2019)
 In Re: Mansfield Public Schools, 25 MSER 2 (2019)
 In Re: Montachusett Regional Vocational Technical School, 25 MSER 59 (2019)
 In Re: Neighborhood House Charter School, 25 MSER 140 (2019)
 In Re: North Middlesex Regional School District, 25 MSER 170 (2019)
 In Re: Pembroke Public Schools, 25 MSER 118 (2019)
 In Re: Quincy Public Schools, 25 MSER 6 (2019)
 In Re: Whitman-Hanson Regional School District, 25 MSER 234 (2019)
 In Re: Whitman-Hanson Regional School District, 25 MSER 84 (2019)
 In Re: Whitman-Hanson Regional School District, 25 MSER 42 (2019)
- Blank v. Chelmsford Ob/Gyn, P.C., 420 Mass. 404 (1995)**
 In Re: Brookline Public Schools, 25 MSER 159 (2019)
 In Re: Lowell Public Schools, 25 MSER 35 (2019)
 In Re: Manchester-Essex Regional School District, 25 MSER 242 (2019)
 In Re: Mansfield Public Schools, 25 MSER 2 (2019)
 In Re: Montachusett Regional Vocational Technical School, 25 MSER 59 (2019)
 In Re: North Middlesex Regional School District, 25 MSER 170 (2019)
 In Re: Pembroke Public Schools, 25 MSER 118 (2019)
 In Re: Quincy Public Schools, 25 MSER 6 (2019)
 In Re: Whitman-Hanson Regional School District, 25 MSER 234 (2019)
 In Re: Whitman-Hanson Regional School District, 25 MSER 84 (2019)
 In Re: Whitman-Hanson Regional School District, 25 MSER 42 (2019)
- Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982)**
 In Re: Bourne Public Schools, 25 MSER 285 (2019)
 In Re: Maynard Public Schools, 25 MSER 29 (2019)
 In Re: Mystic Valley Regional Charter School, 25 MSER 157 (2019)
 In Re: Nashoba Regional School District, 25 MSER 252 (2019)
 In Re: Nashoba Regional School District, 25 MSER 79 (2019)
 In Re: Newton Public Schools, 25 MSER 181 (2019)
 In Re: Quabbin Regional School District, 25 MSER 54 (2019)
 In Re: Shrewsbury Public Schools, 25 MSER 267 (2019)
- Boston v. Board of Education, 392 Mass. 788, 467 N.E.2d 1318 (1984)**
 In Re: Newton Public Schools, 25 MSER 225 (2019)
- Burlington v. Department of Education, 471 U.S. 359 (1985)**
 In Re: Fairhaven Public Schools, 25 MSER 168 (2019)
 In Re: Framingham Public Schools, 25 MSER 105 (2019)
 In Re: Nashoba Regional School District, 25 MSER 79 (2019)
 In Re: Neighborhood House Charter School, 25 MSER 142 (2019)
 In Re: Quabbin Regional School District, 25 MSER 55 (2019)
- Burlington v. Department of Education, 736 F.2d 773 (1st Cir. 1984)**
 In Re: Bourne Public Schools, 25 MSER 285 (2019)
 In Re: Fairhaven Public Schools, 25 MSER 166 (2019)
 In Re: Nashoba Regional School District, 25 MSER 79 (2019)
 In Re: Natick Public Schools, 25 MSER 209 (2019)
 In Re: Northborough-Southborough Regional School District, 25 MSER 194 (2019)
- Burns v. Johnson, 2016 WL 3675157 (July 2016)**
 In Re: Boston Public Schools, 25 MSER 39 (2019)
 In Re: Lincoln-Sudbury Regional School District and Boston Public Schools, 25 MSER 13 (2019)
- C. D. v. Natick Public School District, (C.D.I.) No. 15-13617-FDS (D. Mass. July 21, 2017)**
 In Re: Natick Public Schools, 25 MSER 208 (2019)
- C. D. v. Natick Public School District, 2019 U.S. App. LEXIS 15165 (1st Cir. 2019)**
 In Re: Bourne Public Schools, 25 MSER 286 (2019)
 In Re: Fairhaven Public Schools, 25 MSER 166 (2019)
 In Re: Framingham Public Schools, 25 MSER 104 (2019)
 In Re: Mystic Valley Regional Charter School, 25 MSER 156 (2019)
 In Re: Natick Public Schools, 25 MSER 208 (2019)
 In Re: Northborough-Southborough Regional School District, 25 MSER 194 (2019)
 In Re: Shrewsbury Public Schools, 25 MSER 266 (2019)
- C. G. v. Five Town Community School District, 513 F.3d 279 (1st Cir. 2008)**
 In Re: Framingham Public Schools, 25 MSER 105 (2019)
 In Re: Mystic Valley Regional Charter School, 25 MSER 157 (2019)
 In Re: Nashoba Regional School District, 25 MSER 80 (2019)
 In Re: Natick Public Schools, 25 MSER 210 (2019)
 In Re: Shrewsbury Public Schools, 25 MSER 266 (2019)
- Calderon-Ortiz v. LaBoy-Alvarado, 300 F.3d 60 (1st Cir. 2002)**
 In Re: Montachusett Regional Vocational Technical School, 25 MSER 59 (2019)
 In Re: Quincy Public Schools, 25 MSER 6 (2019)
- Calero-Cerezo v. U.S. Department of Justice, 355 F.3d 6 (1st Cir. 2004)**
 In Re: Boston Public Schools, 25 MSER 39 (2019)
 In Re: Lincoln-Sudbury Regional School District and Boston Public Schools, 25 MSER 13 (2019)
- Caleron-Ortiz v. LaBoy-Alvarado, 300 F.3d 60 (1st Cir. 2002)**
 In Re: Neighborhood House Charter School, 25 MSER 140 (2019)
- Carlette v. Carlette Brothers Foundry, Inc., 793 N.E.2d 1268 (Mass. App. Ct. 2003)**
 In Re: Montachusett Regional Vocational Technical School, 25 MSER 60 (2019)
- Carpenter v. Carpenter, 73 Mass. App. Ct. 732 (2009)**
 In Re: Montachusett Regional Vocational Technical School, 25 MSER 59 (2019)
- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)**
 In Re: Boston Public Schools, 25 MSER 39 (2019)
 In Re: Lincoln-Sudbury Regional School District and Boston Public Schools, 25 MSER 13 (2019)
- Comfort v. Lynn School Committee, 418 F.3d 1 (1st Cir. 2005)**
 In Re: Easthampton Public Schools, 25 MSER 44 (2019)
- D. B. v. Esposito, 675 F.3d 26 (1st Cir. 2012)**
 In Re: Bourne Public Schools, 25 MSER 285 (2019)

In Re: WHITMAN-HANSON REGIONAL SCHOOL
DISTRICT and Mark¹

BSEA #1908079

November 8, 2019

Amy M. Reichbach, Hearing Officer

Practice and Procedure-Mootness—On a hearing request filed by the Whitman-Hanson Regional School District, Hearing Officer Amy M. Reichbach held that there was no live issue before her after the Parent had accepted an IEP placing her son at the Victor School. The district had originally filed a hearing request seeking an order that the IEP it had proposed provided FAPE in the least restrictive environment and that it was not required to fund an independent educational evaluation. The Parent, who had filed multiple motions to dismiss, dropped the request for the evaluation and eventually signed an amended IEP that specified a placement. The Hearing Officer denied Parent’s fourth motion to dismiss before ruling that there was no controversy before her.

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

A hearing was held on September 24, 2019 before Hearing Officer Amy Reichbach. Those present for all or part of the proceedings were:

Dr. John Dorn	Chief Psychologist, READS Clinic
Cheryl Jacques	Program Director, Pilgrim Academy
Lauren Mathisen	Director of Student Services, Whitman-Hanson Regional School District (WHRSD)
Wendy Rosenblum	Director, The Victor School
Alisa St. Florian	Attorney for WHRSD
Jane Williamson	Court Reporter

The official record of the hearing consists of documents submitted by Whitman-Hanson Regional School District (WHRSD or the District) and marked as Exhibits S-1 to S-25, and a one-volume transcript produced by a court reporter. Parent did not appear for hearing or file any exhibits at the time. At the request of the District the case was continued to October 18, 2019 and the record held open for submission of closing arguments. On September 30, 2019, Parent submitted by facsimile, without cover or argument, several documents. The District submitted its closing

argument on October 18, 2019 and the record closed on that date. On October 24, 2019, I issued an Order reopening the record through November 7, 2019 for submission of arguments regarding the issue of mootness in a case, such as the instant matter, in which a student was not attending school, despite a fully accepted Individualized Education Program (IEP). The District submitted its argument on this issue on October 31, 2019. After close of business on November 7, 2019, Parent submitted a document entitled “Closing.”² The record closed on that date.

INTRODUCTION

On March 8, 2019, Whitman-Hanson Regional School District filed a *Hearing Request* with the Bureau of Special Education Appeals (BSEA) seeking an order that its most recently proposed IEP for Mark is reasonably calculated to provide him with a free, appropriate public education (FAPE) in the least restrictive environment. The District also sought an order stating that it is not required to fund an independent educational evaluation (IEE) for Mark at a rate that exceeds the state-approved rate; by the time of the hearing, WHRSD was no longer seeking a BSEA decision on the IEE. Parent filed multiple motions to dismiss and several other motions, discussed in detail below, and ultimately failed to appear at the September 24, 2019 hearing.

PROCEDURAL HISTORY

The Hearing was initially scheduled for March 28, 2019, and a Conference Call was scheduled for March 21, 2019. On March 13, 2019, the District requested postponement of the Hearing due to the unavailability of District counsel and personnel. On March 20, 2019, Parent filed a *Motion to Dismiss*, accompanied by several documents: an email to the District, dated March 12, 2019, rescinding her request for an independent occupational therapy evaluation at public expense; a neuropsychological evaluation conducted by Dr. Carol Leavell, and communications related to that evaluation; and an email exchange with District personnel concerning Parent’s request that the District withdraw its hearing request. In her *Motion*, Parent asserted that because she had rescinded her request for an IEE at public expense, the District lacked grounds for a *Hearing Request*. Specifically, Parent argued, because the District has not alleged a violation of the Individuals with Disabilities Education Act (IDEA), and because there was no pending request for an IEE, the District had no reason to file for hearing other than to “force [her] into submission.” During the Conference Call that took place March 21, 2019, Parent assented to WHRSD’s request to postpone the Hearing, a Pre-Hearing Conference was scheduled for April 22, 2019, and the Hearing was continued to May 28 and 29, 2019. On March 22, 2019, I denied Parent’s *Motion to Dismiss* on the basis that the District’s factual allegations plausibly suggest an entitlement to relief.³

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

2. The “Closing” submitted by Parent after close of business on November 7, 2019 consists primarily of comments regarding home and hospital orders, proposed schedules, medical accommodations, and evaluations. As the record had closed on October 18, 2019 and reopened for the limited purpose of arguments regarding mootness, I consider only the content that addresses this issue.

3. 25 MSER 41 (Reichbach 2019). I also noted that to the extent the evidence shows that Parent has, in fact, withdrawn her request for an IEE, so much of the District’s *Hearing Request* as involves the IEE will be dismissed, unless the District withdraws that claim beforehand.

On April 5, 2019, Parent filed another *Motion to Dismiss (Second Motion)*. In addition to her previous arguments regarding the District's *Hearing Request*, Parent asserted that she had signed and accepted a new IEP on March 26, 2019 and forwarded it to the District and, as such, "there is nothing that remains to be heard on the district's complaint." She included a copy of an IEP for Mark, dated March 20, 2019 to March 19, 2020, including the signature page. Parent had checked the box "I accept the IEP as developed," and commented, "This is tentative as placement has not been determined (see placement page. (*sic*) When will this IEP be implemented?" before signing the page and dating it March 26, 2019. In her *Second Motion*, Parent requested that WHRSD's *Hearing Request* be dismissed with prejudice.

On April 8, 2019, WHRSD filed its Objection to Parent's *Second Motion*. The District acknowledged that Parent had accepted the proposed IEP, but highlighted that the acceptance was conditional, given Parent's comment on the IEP. With its objection, WHRSD submitted an email exchange between Parent and a school official which, it asserted, demonstrated both that the proposed placement has not been accepted and that Parent opposed the request to send additional information regarding Mark to that placement.⁴

On April 16, 2019, I issued an Order denying Parent's *Second Motion to Dismiss*. I also notified the parties that because a motion to dismiss is evaluated solely by reference to the pleadings, meaning that the outcome of any future motion to dismiss the same *Hearing Request* would be the same, any further motion to dismiss would be construed and analyzed as a motion for summary decision.

On April 24, 2019 WHRSD filed a *Motion to Amend Hearing Request* accompanied by an *Amended Hearing Request*. The amended request excluded the IEE claim, but included the most recently proposed IEP for Mark, dated March 20, 2019 to March 19, 2020. By Order dated May 2, 2019, I allowed the amendment under BSEA *Hearing Rule I(G)(2)*.

On May 3, 2019 Parent filed a *Motion for an Order to Observe Proposed Program*, accompanied by a number of documents. On May 6, 2019, she filed a *Motion for a Court Reporter for the Hearing*, and on May 9, 2019, she filed a third *Motion to Dismiss the Hearing Request* filed by WHRSD (*Third Motion*). Parent argued that because she "formally accepted" the district's proposed IEP placement and delivered her acceptance, both by hand and via email, to the Director of Special Education on May 6, 2019, "...there are no disputes currently before the BSEA in this matter..." With her *Third Motion* Parent included a signed Placement Consent Form dated May 4, 2019. On May 10, 2019, WHRSD submitted its *Opposition* to Parent's *Third Motion*, referencing an email sent on May 7, 2019 by a school official to Parent, in which the school official acknowledges receipt of the signed placement

page and asks that Parent both sign a records release⁵ and set up a visit with any school that reaches out following receipt of Mark's referral packet. The District suggested that if parent cooperated with the referral and admission process, it would consider postponing the hearing, but argued that Mark may remain without school placement if the matter were to be dismissed before a placement is secured. On May 21, 2019, I issued an Order in which I concluded that Parent's *Motion for Observation* was not properly before me and that Parent is entitled to a court reporter for the Hearing, but not for additional informal pre-hearing proceedings, and denied Parent's *Third Motion to Dismiss*.⁶ As I emphasized in that *Ruling*, pursuant to 20 U.S.C § 1515(b)(6) and Bureau of Special Education Appeals (BSEA) *Hearing Rules for Special Education Appeals*, a party need not allege an IDEA violation for a hearing request to be properly within the jurisdiction of the BSEA. Rather, the BSEA has jurisdiction over "any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education."⁷ Accordingly, even in the absence of any allegations that IDEA has been violated, the District may seek a determination that a rejected proposed IEP and placement are reasonably calculated to provide a student with a FAPE.

On May 14, 2019, WHRSD requested a three month postponement of the hearing to permit Parent to visit, and Mark to interview with, potential placements. On May 20, 2019, Parent assented to a one month postponement, and the hearing was postponed to June 26 and 27, 2019.

On May 22, 2019, Parent filed a *Motion to Recuse* and a *Motion for Production of Documents from the Department of Elementary and Secondary Education Special Education Dept (sic) and the Whitman Hanson Regional School District*. By way of the *Motion for Production*, Parent sought "a copy of the Whitman Hanson Regional School District signed Assurances made to the SEA as a condition upon which the LEA would receive the IDEA special education funds [and] a copy of the Assurances signed by the SEA and given to OSEP as part of the condition upon which the state made to OSEP to receive approximately \$642 million since 2011 in special education funding." On May 23, 2019, the District filed an *Opposition* to Parent's *Motions*. On June 11, 2019, I issued an Order denying both motions, as I concluded that recusal was neither necessary nor appropriate, and there was no basis for an order that WHRSD or the DESE produce copies of the Assurances sought by Parent.⁸

In the meantime, by way of letters filed May 23 and June 5, 2019, the District sought further postponement of the hearing, as one of its key witnesses would not be available, and reiterated its prior request for a longer continuance. Parent did not object. Despite numerous attempts, the BSEA was unable to reach Parent, by tele-

4. It appears from this email exchange that Whitman-Hanson Regional School District initially sent redacted records to the proposed placement.

5. The District attached to the email sent to Parent on May 7, 2019 a list of 10 schools that it described as Department of Elementary and Secondary Education (DESE) approved Private Day Schools that it believes will meet Mark's needs.

6. 25 MSER 83 (Reichbach 2019). As I noted in my *Ruling*, because Parent's *Third Motion* pertained to an *Amended Hearing Request*, I treated it as a motion to dismiss rather than a motion for summary decision.

7. "Scope of Rules," BSEA *Hearing Rules for Special Education Appeals*.

8. 25 MSER 107 (Reichbach 2019).

phone or by letter, to schedule a Conference Call to discuss the District's request. On June 14, 2019, I issued an Order allowing the District's postponement request and scheduling the Hearing for September 24 and 26, 2019.

On August 22, 2019, Parent filed a *Fourth Motion to Dismiss (Fourth Motion)*.⁹ On September 9, 2019, the BSEA forwarded a copy of Parent's *Fourth Motion* to Counsel for the District, triggering the 7 day period for the District's response. I also reminded the parties that Parent's filing would be construed as a *Motion for Summary Decision*. WHRSD filed an *Opposition* to Parent's *Fourth Motion* on September 12, 2019. The BSEA was unable to reach Parent to schedule oral arguments on the motion, and as such, on September 16, 2019, I issued an Order explaining that I would entertain these arguments at the beginning of the Hearing on September 24, 2019.

On September 19, 2019, Parent filed a letter objecting to the sufficiency of the District's *Hearing Request*; objecting to any further amendments or postponements, and indicating that she did not intend to participate in the Hearing scheduled for the following week. On September 20, 2019, I issued an Order explaining that to the extent Parent's letter constituted a sufficiency challenge under BSEA *Hearing Rule* I.E., it was untimely, and that the hearing would go forward in Parent's absence should she elect not to attend.

Parent did not appear for Hearing on September 24, 2019. As she did not submit affidavits or sworn statements with her *Motion for Summary Decision*, and was not available to supplement her one-page *Motion* with oral arguments, I denied the motion orally.

ISSUE FOR HEARING

The only issue for hearing is whether the IEP proposed by Whitman-Hanson Regional School District for the period from March 20, 2019 to March 19, 2020, as amended June 26 and September 16, 2019, including placement at the Victor School, is reasonably calculated to provide Mark with a free, appropriate public education in the least restrictive environment, or FAPE.

FINDINGS OF RELEVANT FACT

1. On or about June 26, 2019, Parent signed an IEP for Mark dated 3/20/2019 to 3/19/2020, as amended that day to specify placement at The Victor School. WHRSD received this signed IEP on or about July 1, 2019. (S-5; S-5A)

2. Mark's Team convened on September 16, 2019 to review an audiology assessment and consider Parent's request for a reduced schedule for Mark. On or about September 17, 2019, the District generated an IEP Amendment proposing accommodations based

on the audiology assessment and rejecting Parent's request. (S-25; Mathisen, T: 38-48)

3. On or about September 27, 2019, after the close of the hearing, Parent signed this amendment. (Documents submitted by Parent after hearing, before the record closed; District's closing statement)

DISCUSSION

At this point, Parent has signed Whitman-Hanson Regional School District's proposed IEP for the period dated March 20, 2019 to March 20, 2020, as amended on June 26 and September 16, 2019. By signing the IEP and amendments, Parent has accepted the proposed program and placement as written. This fully accepted IEP defines the scope of WHRSD's responsibility for, and obligations to, Mark during this time period.¹⁰

CONCLUSION

Whitman-Hanson Regional School District has proposed, and Parent has accepted, an IEP placing Mark at The Victor School. There is no live issue before me.

ORDER

So ordered.

By the Hearing Officer.

* * * * *

9. Parent's *Fourth Motion to Dismiss* did not comply with BSEA *Hearing Rule* I.C., which requires that a party serve its motion on the opposing party and the Hearing Officer simultaneously and include a signed statement to the effect that she has sent a copy to the opposing party. Parent failed to file this statement and in fact, it appears that the District never received this Motion from Parent.

10. Should the Individualized Education Program (IEP) be rejected before it expires on March 20, 2020, the District may file a new *Hearing Request* and request that the Hearing Officer take into account the evidence, including the transcript, submitted and developed in the instant matter.

Daniel T. S. Heffernan, Esq.
Kotin, Crabtree & Strong, LLP

Daniel T.S. Heffernan is a partner in the Boston law firm of Kotin, Crabtree & Strong, LLP, a general practice firm. He and his colleagues, **Robert K. Crabtree, Eileen M. Hagerty, Marie F. Mercier, Joseph B. Green, Melanie R. Jarboe, and Alicia M.P. Warren and Nathan Y. Sullivan** concentrate their practices in special education law, among other areas. All frequently lecture and write on issues in education and disability law.

INTRODUCTION

The importance of well qualified experts with thorough and reasonable positions again comes to the fore in several of this quarter's decisions. *Nashoba Regional School District*, BSEA #1909691, 25 MSER 244 (Putney-Yaceshyn, 2019), illustrates this well. The parents had a longstanding expert who had gathered wide ranging and current information on the student, supporting parents' claim. In addition, the decision showed that the lack of robust progress in the private placement is not fatal to the parents' claim for continued placement there. In contrast, the fact that the student in *Bourne Public Schools*, BSEA #2000039, 25 MSER 268 (Figuroa 2019) struggled mightily in the residential component of a private placement undercut the claim for day placement there as well as the credibility of the parents' expert who opined that the student needed to be placed residentially there. The case also involved the juxtaposition of the usual scenario where Bourne had more appropriate peers for the student than the private placement. Without an expert supported link between IEP goals and an extracurricular, the parents' push for transportation to accommodate that extracurricular was denied in *Ipswich Public Schools and Soleil*, BSEA #1906526, 25 MSER 227 (2019 Lindsay Byrne). In addition, the lack of credibility and forthrightness of the parent were the determining factors in *Newton Public Schools*, BSEA #190771, 25 MSER 222 (Putney-Yaceshyn 2019), where a potentially valid claim for residency went down in flames after the parent's evasive and contradictory testimony. The shell of an IEP, offered as the hearing was beginning, mooted the parents' claim for prospective placement resulted in a dismissal of that claim in *Nashoba Regional School District and Nalini*, BSEA #1906261, 25 MSER 236 (Lindsay Byrne, 2019). The well-established two-year statute of limitations for IDEA claims and the requirement to first bring those claims to the BSEA instead of state or federal court was reaffirmed in *Manchester-Essex Regional School District*, BSEA #2003498, 25 MSER 238 (Figuroa 2019). The hearing officer in *Shrewsbury Public Schools and Lowen*, BSEA #1910123, 25 MSER 255 (Reichbach 2019) took on the great effort to detail the services that were not provided by the district and after totaling them, ordered the school district to come up with a reasonable and useful way to compensate for them. Lastly, *In Re: Kipp Academy, Lynn Public Schools, the Department of Elementary and Secondary Education and Sergio*, BSEA #2003363, 25 MSER 292 (Reichbach 2019) gives an overview of the rights and responsibilities of the various parties involved in the placement of a student in a "program school."

FISCAL YEAR 2019 BSEA STATISTICS

Before commenting on this quarter's decisions, we offer an overview of the BSEA statistics for Fiscal Year 2019, relying in part on BSEA Director Reece Erlichman's interesting insights into not only the invaluable work of the BSEA, but also into some trends regarding the subject matter of special education disputes in the Commonwealth.

As sure a thing as any, the number of rejected IEPs has again increased.

FY19 - 11,979

FY18 - 11,900

FY17 - 11,400

FY16 - 10,800

The number of hearing requests has remained relatively stable over the last few years, with the exception of a significant spike in FY16.

FY19 - 483

FY18 - 481

FY17 - 495

FY16 - 568

FY15 - 492

Matters going through full hearings resulting in written decisions were consistently around 50 per year until they declined significantly after FY13. **FY18** yielded the lowest number of full hearings (13) since the early days of the BSEA. The consensus is this was attributable to two factors. First, and most significantly, is the number of matters going to settlement conferences and the effectiveness of Reece Erlichman in getting those matters resolved. Settlement conferences were held in 76 of the cases that were filed for hearing in FY 2019 (as compared to 78 in FY 2018 cases), of which 67 were settled. The other factor was the use of pre-trial motions to resolve matters completely or position them for resolution. FY19 saw 19 matters going to full hearings, which is consistent with recent trends.

FY19 - 19

FY18 - 13

FY17 - 22

FY16 - 23

FY15 - 18

FY14 - 25

FY13 - 52

Of the 19 decisions noted above, parents fully prevailed in three. The parents were represented by counsel in two of those cases and appeared *pro se* in one; the school district was represented by counsel in all three matters. School districts fully prevailed in 13 of the 19 hearings. The parents were represented by counsel in six matters, and appeared *pro se* in seven; the school district was represented by counsel in all 13 matters. Mixed relief was granted in one matter, with the parent *pro se* and the district represented by counsel. In the two LEA assignment matters, both districts involved were represented by counsel.

The BSEA conducted 114 facilitated IEP Team meetings, a decrease from the 142 conducted during the previous year. (Note that the BSEA had to decline 29 requests for facilitated IEP Team meetings this year owing to staff unavailability.)

There were 714 mediations conducted in FY 2019 (representing an increase from the 699 conducted during the prior year), with an agreement rate of 83%. The number of mediations and the agreement rate has been consistent for several years.

Since BSEA filings are confidential, the only publicly accessible information about those is what can be gleaned from the written decisions about a relatively small number of them. Reece Erlichman has provided insight into some of the trends reflective in the bulk of the filings. There was an increase in filings relating to program schools (METCO, vocational schools, school choice, and charter schools) with respect to the procedural and substantive responsibilities of district of residence. There were also filings involving divorced parents who disagreed about the acceptance of the IEP. DESE's stricter rules regarding the use of public funds for non-approved schools also yielded some hearing requests.

A full review of the BSEA statistics from the past 10 years can be found at <https://www.mass.gov/bsea-statistics>.

The BSEA issued three standing orders in 2019. These accord standing to file hearing requests with the BSEA to private schools and agencies that receive public funding to provide special education services, detail the requirements for filing a request to join a state agency or other party to a BSEA proceeding, and detail rules for communicating with BSEA. The full standing orders can be viewed at <https://www.mass.gov/service-details/bureau-of-special-education-appeals-standing-orders>.

We take this opportunity to thank Marc Seigny for his many years of service as the coordinator of mediations. He has done a remarkable job and served the school districts and families throughout the state exceptionally well. The selection of Myrto Flessas as Marc's successor is widely hailed as a superb choice, and we welcome her to the position.

ONE PARENT MOVING IN FROM OUT OF STATE UNABLE TO HAVE A MASSACHUSETTS SCHOOL DISTRICT FUND THE MASSACHUSETTS RESIDENTIAL SCHOOL

The parents in *Newton Public Schools*, BSEA#190771, 25 MSER 222 (Putney-Yaceshyn 2019)¹, had lived in Milford Connecticut since September 1995. Their daughter was 17 years old at the time of the hearing in March 2019 and lived full time with her parents in Milford from the time she was adopted in August 2003 until July 2018 when she was unilaterally placed as a residential student at the Chamberlain School in Middleborough, Massachusetts. Prior to that, she attended the Milford, Connecticut public schools from kindergarten through her freshman year in high school. In July 2018, the parents and a Milford Public Schools' administrator met and revised student's recommended placement from an in-district one to an approved residential therapeutic school for the 2018-2019 school year. Parents and Milford entered into a confidential settlement agreement, the terms of which the father was prohibited from disclosing.

The issue addressed in Newton's summary judgment motion was whether Newton had responsibility to fund the student's placement at Chamberlain after the student's father purportedly moved to Newton from Milford. The hearing officer found for Newton because she did not find the parent's claim that he had established residency in Newton to be credible.

The father had worked for a Massachusetts software company since April 2010 that was based in Waltham at the time of the hearing. For many years, the father commuted and stayed in a hotel near his office 30 to 50 percent of the time. After his employer purportedly began pressuring him to work full time in the Waltham office, the father signed a lease for a property in Newton for the term August 1, 2018 through August 31, 2019.

Prior to this and other actions, the father had researched "what constitutes state residency" before embarking on his effort to establish residency in Massachusetts. Regarding his Massachusetts residence, the father was actually renting a room. The landlord veered from his practice of no leases and only short-term rentals to giving a 12-month lease only because the father insisted on it. The father would pay an additional \$50 a night when his daughter would spend the night, but in the 10 months since the inception of the lease, the father paid a total of \$500. The student did not participate in any activities or join any groups in Newton and in fact spent little time in Newton even when staying overnight there. The mother had never stayed in the Newton house. The father had stated to Newton that his wife would stay in Connecticut because of health issues (which were never detailed) and Newton would be his daughter's primary residence when not at Chamberlain because his wife could not care for her. However, at the time of the hearing, the father testified that his daughter had stayed with his wife in Connecticut all of the previous week. There was no custody agreement that stated the father had physical custody. When a Newton's police officer visited the Newton house during a Chamberlain school break, he was shown the room where the student would stay. There were no clothes, pictures or any indi-

1. The parents were represented by Joseph Green of Kotin, Crabtree & Strong.

cation that a young female lived there. The landlords could not describe the student. The officer also examined the father's room, which also lacked photos or personal items other than a laptop.

Regarding other indicia of residency, the father did obtain a Massachusetts driver's license. He joined a Newton gym, but suspended his membership. He attended church in Newton, but had not joined a church and was still a member of a Connecticut church. His Facebook page listed Milford as his residence. He had ridden in the Pan-Mass Challenge but an article about this in a Milford newspaper was titled "Milford Man to Ride in Pan-Mass Challenge." His doctors and dentist were still located in Connecticut. Even the student's therapy dog lived in Connecticut. The hearing officer found that very little had changed in the father's living arrangement since his purported move to Massachusetts.

At a registration meeting with Newton in November 2018, Newton asked if there was any agreement with Milford outside the IEP. The father misrepresented that he did not know of any agreement. The hearing officer found the father's testimony to be "extraordinarily lacking in credibility." He was evasive and contradicted himself. For example, he testified that he could not remember May or July 2018 meetings with Milford and when shown documentation that he attended, he stated "I have no recollection of a lot of 2018." The hearing officer even went to the point of explicitly finding the father pursued the action in bad faith.

This case is clearly a case underscoring the credo that the three most important things in trials/hearings are "credibility, credibility and credibility."

TRANSPORTATION DENIED TO EXTRACURRICULAR WHEN THOSE ARE NOT NECESSARY TO PROVIDE FAPE

The student in *Ipswich Public Schools and Soleil*, BSEA #1906526, 25 MSER 227 (2019 Lindsay Byrne) was a 17-year-old high school senior. He was diagnosed with ASD and ADHD. After being harassed by other students during his freshman year at Ipswich High School, he was transferred to Masconomet Regional High School with Ipswich funding his placement and providing transportation. He did well at Masconomet, both academically and socially. He was a member of Masconomet's football team. Practices and games did not occur at predictable times during the season, and off-season conditioning programs, which were not required but understood to increase one's chance of being on the team, occurred between 6:00 a.m. and 7 a.m. Ipswich offered transportation at the beginning and end of the standard school day and it was very difficult for the parents to provide transportation to accommodate the football team schedule. The parents based their push for this transportation on the reasoning that sports were an integral part of the student's high school experience and he was attending Masconomet High School because of Ipswich's inability to provide FAPE at Ipswich High School.

The hearing officer found that the failure to provide accommodating transportation did not deny the student FAPE. There was no credible expert support for the proposition that participation

in sports was necessary for the student to meaningfully progress towards his IEP goals other than brief letters from the student's PCP and pharmacist supporting the general proposition that sports were good for the student. He did not require other accommodations such as equipment modification or supervision to participate on the football team or specialized transportation otherwise. The hearing officer noted that families of non-disabled football team members had to deal with the burden of early morning and unpredictable practice and game schedules. Therefore, hearing officer failed to order Ipswich to provide transportation for this extracurricular.

To obtain the transportation, the family needed to garner stronger expert support connecting the sports to the student's IEP goals. Such a case could be made if it were shown that participation in the extracurricular sports were important in achieving social emotional goals. While the parents lacked this expert support, we believe the hearing officer gave short shrift to the claims for transportation. The non-disabled teammates all presumably lived closer to Masconomet High School and therefore the transportation burden was obviously more significant for this student with special needs. His inability to be on a team at his local high school was not due to a choice he made but solely because Ipswich could not provide him FAPE at Ipswich High School.

THE DISTRICT'S OFFER, AT THE BEGINNING OF THE HEARING, OF A SHELL OF AN IEP OFFERING THE PROSPECTIVE PLACEMENT SOUGHT BY THE PARENTS, MOOTS THE PROSPECTIVE PLACEMENT ISSUE

In *Nashoba Regional School District and Nalini*, BSEA #1906261, 25 MSER 236 (Lindsay Byrne, 2019)², the parents had long sought district funding of a residential therapeutic school for the student. They placed their daughter unilaterally at a therapeutic program, Asheville Academy for Girls, in North Carolina in March 2017 until her discharge in May 2018. The student then entered a Nashoba-funded therapeutic day school, Summit Academy, but lasted only six days there and was eventually hospitalized. DMH offered to place her in a short-term assistance and rapid re-integration program ("STARR") that would be connected to a day school, at which Nashoba was offering an extended evaluation. She entered the STARR program but was unable to attend a single day at the therapeutic day school next door. The parents filed a hearing request seeking reimbursement for the Asheville placement and (on an expedited basis) immediate placement in a residential therapeutic program. Nashoba successfully moved to have DMH joined to the action. At a pre-hearing, the parties agreed to bifurcate the proceedings and scheduled the prospective placement portion of the case for a hearing shortly thereafter. The three parties subsequently agreed to interim residential placement at Dr. Franklin Perkins School and postponed the hearing. During the course of this postponement, Nashoba and the parents resolved the reimbursement claim and the interim agreement for the student's residential placement at Perkins was extended until the hearing officer's decision on the matter.

2. The parents were represented by Daniel T.S. Heffernan and Melanie R. Jarboe of Kotin, Crabtree & Strong.

Nancy Nevils, Esq.
Stoneman, Chandler & Miller

Nancy Nevils is a partner at Stoneman, Chandler & Miller LLP, who focuses on the field of education law. Her expertise includes special education, student discipline, and all other school-related matters. In addition, Ms. Nevils has been active in presenting at numerous seminars with focus areas from special education laws to Section 504 of the Rehabilitation Act and student discipline.

The 4th Quarter of 2019 came to a close with a reasonable level of activity, with six Decisions after an evidentiary hearing and four Rulings. Two of the Rulings are worthy of comment, including the *Manchester-Essex* Ruling which made clear that FAPE claims under Section 504 or IDEA are not tolled until a minor student reaches the age of majority. The *KIPP Academy* Ruling also is important because, on a closer read, one learns that DESE's position is that a charter school is not permitted to contract with school districts other than the student's school district of residence when the charter school lacks appropriate in-district special education programming for the student. Good to know! Stay tuned for a possible DESE update to its Technical Assistance Advisory regarding charter schools' responsibilities to students who may need out-of-district placements. At year's end, there certainly was no shortage of comment-worthy decisions, with the *Newton* decision being of interest. Here a Connecticut resident's effort to get Newton to fund his daughter's residential placement at Chamberlain now has him facing the distinct possibility of having to reimburse Newton for its attorney's fees. Those struggling with figuring out transportation responsibilities will want to read *Ipswich & Soleil*. Finally, public school administrators should review *Nashoba Regional School District* and *Bourne Public Schools* in search of take-away pointers for unilateral placements.

RULINGS

Two-Year Statute of Limitations, Applicable to FAPE-Related Claims under Section 504 or IDEA, Is Not Tolled Until Minor Student Reaches Age of Majority

In Re: Manchester-Essex Regional School District, BSEA # 2003498, 25 MSER 238 (Figueroa 2019)

Parent filed a hearing request against Manchester-Essex alleging a denial of a free, appropriate public education (FAPE) regarding her now 16-year-old daughter living in Gloucester because, when Student was in elementary and middle school, Manchester-Essex had not placed Student on either a Section 504 Plan or an IEP. Manchester-Essex filed a Motion to Dismiss these claims on the grounds that they are barred by a two-year statute of limitations. Parent/Student argued that the statute of limitations is tolled until the student reaches the age of majority. Hearing Officer Figueroa correctly rejected this argument, determining that nothing in the IDEA warranted tolling the statute of limitations until the student reaches the age of majority nor finding that a student is not bound by her parent's actions or inactions when she was a minor. Parent/Student also asserted "misrepresentation" that tolls the statute of

limitations because the Office for Civil Rights, where Parent had filed a complaint against Manchester-Essex in 2016, failed to provide notice of the BSEA's filing requirements. Hearing Officer Figueroa wasted no time with this assertion, noting that while the IDEA does toll the statute of limitations for misrepresentation, the misrepresenting party must be the "local educational agency." Given that all claims relate to FAPE and arose more than two years before Parent filed the BSEA hearing request, Hearing Officer Figueroa dismissed the hearing request with prejudice.

Embedded in Ruling Is Important DESE Position That Charter School Lacking In-District Programming for Student Is Not Permitted to Contract with School Districts Other Than School District of Residence for Delivery of IEP Services

In Re: KIPP Academy, Lynn Public Schools,¹ the Department of Elementary and Secondary Education and Sergio, BSEA # 2003363, 25 MSER 292 (Reichbach 2019)

Sergio, a Lynn resident, is a 4th grader on an IEP due to an emotional disability. Sergio has been enrolled at KIPP Academy, a charter school in Lynn, since kindergarten. According to the Ruling, when Sergio was in 2nd grade, KIPP determined that Sergio needed a substantially separate therapeutic program, which KIPP did not have available until 5th grade. KIPP asserts that it reached out to Sergio's district of residence (DOR) about programming options only to find the DOR unresponsive. KIPP also contends that it reached out to DESE's Charter School Office and did not receive specific guidance about how to proceed under these circumstances. Consequently, KIPP ultimately worked with Sergio's family and the Marblehead Public Schools to place Sergio in Marblehead's substantially separate program for the 2018-2019 school year. All was well until May of 2019 when DESE informed KIPP that the charter school was not permitted to contract for services with school districts other than the DOR. DESE gave a waiver to KIPP for the 2018-2019 school year but indicated there would be no waiver for the 2019-2020 school year.

In June 2019, KIPP convened a Team meeting with the DOR in attendance, and the school-based Team proposed a substantially separate program located within the DOR. Sergio's parent rejected the DOR placement and asserted "stay put" to the placement in Marblehead. With the dispute in full force and Sergio missing the beginning of school, DESE granted a waiver for the 2019-2020 school year, and Sergio then returned to school in Marblehead.

DESE filed a Motion to Dismiss, which KIPP opposed since KIPP faced the possibility of being forced to violate either a DESE di-

1. A colleague of this Commentator represented Lynn Public Schools in this matter.

rective not to fund a public school other than the DOR or a BSEA decision. Hearing Officer Reichbach understandably determined that, at this early stage in the process, she was unable to rule that KIPP would not be prejudiced if DESE was no longer a party.

Parent also filed a Motion for Summary Judgment, arguing that the Massachusetts special education regulations regarding school district responsibility were inapplicable because Sergio's Team determined that he needed a substantially separate program, not a private day or residential school. Parent also contended that KIPP is not required to work with the DOR to meet Sergio's needs and that there is no law or regulation prohibiting KIPP from contracting with Marblehead Public Schools. The Ruling contains a helpful discussion of DESE's Technical Assistance Advisory that focuses on charter schools and their responsibilities to students who may require out-of-district placements. Ultimately, in terms of the Motion for Summary Judgment, the hearing officer was able to deny the motion since the parties had not provided her with relevant factual information related to the issues in dispute.

DECISIONS

Father Found to Have Filed for Hearing for Improper Purpose of Compelling City Where Student Does Not Reside to Fund Residential Placement

In Re: Newton Public Schools, BSEA # 1907771, 25 MSER 222 (Putney-Yaceshyn 2019)

Parent filed for hearing seeking an Order requiring Newton to fund his daughter's placement as a residential student at Chamberlain School. The parties held a bifurcated hearing to first address Student's residency. Student has lived with her parents in Milford, Connecticut since being adopted in August 2003 until July 2017, when her parents unilaterally placed her as a residential student at Chamberlain. In May 2018, Milford Connecticut Public Schools held an annual review Team meeting and developed an IEP for an in-district therapeutic day school, rejecting parents' request for a residential placement. However, shortly thereafter, without a Team meeting, Milford revised the IEP and proposed a therapeutic residential school for the 2018-2019 school year. The parents and Milford Connecticut schools also signed a confidential settlement agreement.

On August 1, 2018, Student's father signed a lease to rent one room of a single family house in Newton, purportedly because of how much time he was spending working in his employer's Waltham office. His wife, and mother of Student, continued to live in their family home in Connecticut and has never stayed at the Newton address. When the daughter stays in Newton, Father rents another room in the house, which has happened 10 or fewer times in about one year's time.

Father took the position that the Massachusetts special education regulations link the responsible school district with the parent's residence. Hearing Officer Putney-Yaceshyn began by citing a 2009 BSEA decision that called into question those regulations to the extent that they suggested that responsibility should be based on a parent's residence rather than the student's given that Mass. General Laws Chapter 71B and the SJC's holding in the *Walker* case provide that the student's residence governs school district responsibility. Putting aside the applicability of the regulation

for a minute, the hearing officer also determined that to establish a new domicile, it would have been necessary for the father to have abandoned his Connecticut domicile, which he has not done. Although the father testified that he did not intend to return to Connecticut, the hearing officer did not believe him, writing that the father's testimony was "extraordinarily lacking in credibility" as he contradicted himself and gave evasive testimony. Hearing Officer Putney-Yaceshyn went so far as to find that the father pursued this hearing in bad faith for the improper purpose of obtaining an Order required Newton, where Student does not reside, to fund her residential placement which was the subject of a confidential settlement agreement between the parents and Milford, Connecticut Public Schools. This determination by the hearing officer makes recovering attorney's fees from the parent a real possibility for Newton.

Public School That Voluntarily Placed Student At Neighboring Public School Due to Harassment Does Not Need to Provide Transportation Outside of Regular School Hours to Facilitate Student's Access to School-Sponsored Sports or Related Activities

In Re: Ipswich Public Schools & Soleil, BSEA # 1906526, 25 MSER 227 (Byrne 2019)

Soleil is a 17-year-old high school senior who is eligible for an IEP due to Autism Spectrum Disorder and ADHD. Soleil lives in Ipswich but has attended Masconomet Regional High School since 2016 due to an agreement between the two school districts after Soleil experienced serious physical harassment from his peers at school. Parents filed for hearing seeking a publicly funded car service outside of regular school hours to accommodate Soleil's participation in school sponsored sports and sports-related activities. According to the decision, Ipswich provides reliable transportation for the start and end of school, including a late bus at 5:45 pm. On days when Soleil needs especially early or late transportation, however, the parent drives Soleil and Ipswich reimburses the parent for mileage.

Hearing Officer Byrne began the decision by noting that there was no persuasive evidence that Soleil needed to participate in a sport or to exercise in order to make meaningful educational progress. While the parent provided letters from a pharmacist and a doctor in support of Soleil's participation in sports, the hearing officer found that the letters lacked any traditional indicia of trustworthiness and had not been made available to the Soleil's IEP Team. In fact, even Soleil's mother testified that participation in sports was not a necessary component of Soleil's IEP. Next, the hearing officer concluded that the "great weight of the evidence" does not support that Soleil needs specialized transportation because of his disabilities. Instead, the hearing officer determined that the reasonable conclusion was that the request for a private car service was due to the parents' convenience rather than because Soleil needed it due to his disability. Hearing Officer Byrne determined that "custom" transportation at 6 am and after 5:45 pm was not required in order for the IEP to be implemented.

Parents Succeed in Obtaining Reimbursement for Third School Year at Learning Prep Where Public School Could Not Provide Small Group Settings for All Academic Subjects

In Re: Nashoba Regional School District, BSEA # 1909691, 25 MSER 244 (Putney-Yaceshyn 2019)

Student is a 12-year-old boy who has been diagnosed with other specified neurodevelopmental disorder, severe ADHD (inattentive type), and specific learning disabilities in reading, written expression and math. He also is vulnerable to anxiety and was diagnosed with depression at the end of 3rd grade, at which time he began taking an anti-depressant. Student attended Learning Prep School for the 2017-2018 and 2018-2019 school years pursuant to a settlement agreement. Parents continued Student's placement at Learning Prep for the 2019-2020 school year and filed for hearing.

Nashoba failed to convince the hearing officer that its proposed IEP that called for general education science and social studies classes, supported by a paraprofessional, was appropriate to meet Student's needs. Hearing Officer Putney-Yaceshyn found the parents' evaluator to be a "very credible witness," and thus accepted her testimony that Student, whom most agreed struggled mightily with attention and had weak working memory and processing speed, would find the general education classroom too fast paced and not conducive to immediate clarification and reinforcement. The parents' expert also was able to refer back to reports from parents' expert several years earlier, which described Student becoming overwhelmed and shutting down in a general education setting, and which had her concerned about a repeat performance.

Hearing Officer Putney-Yaceshyn took Nashoba to task for proposing general education science and social studies classes without having any evidence that Student would be able to access the curriculum. She also expressed a number of concerns about Nashoba's expert, including why the expert's observation in Nashoba had not included the proposed general education science and social studies classes when that was the heart of the dispute. The hearing officer also was critical about the limited amount of information Nashoba's expert had about Student, including that he had not spoken to the parent. She also seemed non-plussed by the fact that Nashoba's expert did not arrive at a definitive conclusion about where Student should be educated to receive FAPE.

Nashoba argued that Student should not continue at Learning Prep because Student had made little writing progress and no math progress while there. This Commentator notes that it can be a tough sell to argue that a student failed to make appropriate progress in a MA DESE approved private school and therefore the student should be placed in an even less restrictive setting back in the public school. Hearing Officer Putney-Yaceshyn countered Nashoba's argument, writing that evidence of progress is unnecessary for parents to prevail since the 1st Circuit's focus tends to be on the appropriateness of services provided in light of the educational experts' recommendations rather than on progress. However, she did note that there was no evidence at the hearing about how much progress the parties should expect of Student. In addition, she was able to point to testimony about several areas

where Student showed growth while at Learning Prep. Given that Learning Prep was able to provide the small group, language-based setting for all core academics that Student needed, Hearing Officer Putney-Yaceshyn ordered Nashoba to reimburse Parents for all costs associated with Student's placement at Learning Prep for the 2019-2020 school year.

Parents Prevail on Compensatory Speech Services Claim But Fail to Obtain Desired 1:1 Special Educator for All Core Subjects

In Re: Shrewsbury Public Schools and Lowen, BSEA # 1910123, 25 MSER 255 (Reichbach 2019)

Lowen is a 17-year old with global intellectual, social, communication and motor deficits that are consistent with his diagnoses of Autism Spectrum Disorder and profound intellectual disorder. Lowen's parents filed for hearing arguing that Shrewsbury owed compensatory services and that Lowen required a 1:1 special educator for all core subjects, 90 minutes a week of direct speech language services, and 10 hours a week of home services.

After a three-day hearing, Hearing Officer Reichbach concluded that Shrewsbury failed to provide 28.5 hours of speech services and ordered Lowen's Team to convene within 10 days to develop a compensatory services plan. However, she determined that the parents had not produced any evidence to support their request that Lowen be taught by a 1:1 special educator in all academics rather than Shrewsbury's proposed model of an ABA technician supervised by a special education teacher. Shrewsbury's witnesses also were convincing that Student no longer needed a 1:1 aide given Lowen's improved ability to focus and remain on task and reduced aggression and self-injurious behaviors. The hearing officer also determined that, while the parents had not established that Lowen required 90 minutes a week of direct speech services, she was unable to agree with Shrewsbury that such services were not needed since Shrewsbury failed to provide the service consistently or to collect meaningful data. Similarly, it was unclear to the hearing officer if Lowen requires home services to receive FAPE. Although Shrewsbury had not sought substitute consent regarding assessments of Lowen, given that multiple witnesses testified that certain assessments would be helpful, Hearing Officer Reichbach ordered that Shrewsbury conduct a psychological, speech/language, functional academic, and home assessments.

Lack of Same-Age Peers and Lack of Academic Progress at Riverview School Doom Parents' Hearing Request Seeking Funding for Unilateral Placement

*In Re: Bourne Public Schools*², BSEA # 2000039, 25 MSER 268 (Figueroa 2019)

Student is diagnosed with a non-verbal learning disability, ADHD (combined type), specific learning disabilities in reading, writing and math, unspecified anxiety disorder and rule out of reactive attachment disorder. The parties disagreed about whether or not Student has a borderline/mild intellectual disability. Beginning with 3rd grade, Bourne placed Student in a substantially separate program in the Plymouth Public Schools, where Student remained through 4th grade. For 5th grade (2017-2018 school year), Bourne offered Student a placement in a partial inclusion program

2. A colleague of this Commentator represented Bourne Public Schools at this hearing.