MSER Commentary — Second Quarter 2012

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The 2nd quarter of 2012 was short on BSEA rulings (2) and decisions (6) but long on important and interesting cases. Parents prevailed in 2 decisions, public schools prevailed in 3 decisions, and 1 decision was a split decision. Two of the six cases involved public schools that violated their "child find" obligation and paid mightily. In *In Re: CBDE Public Schools*, 18 MSER 147, the hearing officer found that CBDE exercised "gross misjudgment" in not referring a student for an evaluation, paving the way for a potential federal court order for money damages under Section 504. In *In Re: Amherst-Pelham*, 18 MSER 126, the public school's failure to refer led to an order to reimburse parents for two years worth of tutoring expenses and other compensatory services determined by the Team. Another interesting read is a different Amherst-Pelham case, 18 MSER 187, that addresses what constitutes unlawful "predetermination" in the special education process. Rounding out this Commentator's "must reads" is *In Re: Duxbury*, 18 MSER 209, in which the hearing officer denies tuition reimbursement since Student's placement in a regular education boarding school was not appropriate to meet student's substantial special education needs.

RULINGS

Department of Developmental Services (DDS) Joined As a Party Given Possibility That DDS Supports "in Addition to" School District Proposal Would Allow Student to Remain Home and Receive In-District School Program

In Re: Silver Lake R.S.D.[1], BSEA # 12-5819 (Byrne 2012); 18 MSER 186

Parent filed for hearing seeking an Order that Silver Lake fund a residential placement for Ulrike, an 11-year old who had had several prolonged hospitalizations and other out-of-home placements in the school year preceding the hearing request. Silver Lake filed a Motion to Join the Department of Developmental Services (DDS), which already had found Ulrike eligible for DDS family supports. Silver Lake contended that DDS should be a party since Ulrike is entitled to receive certain DDS services that are uniquely within DDS's control which, if provided, would allow Ulrike to remain home safely and to access the least restrictive, appropriate educational program.

The hearing officer began her ruling by reciting the legal framework for involuntary joinder of a party, noting that "every joinder determination is unique and highly fact dependent." In this case, the hearing officer concluded that the facts supported joinder since Ulrike is eligible for DDS services and the DDS services being sought would be "in addition to" the special education and related services Silver Lake was proposing.

Public School's Placement Proposal Fails to Satisfy BSEA Order to Locate or Create Language-Based Program, Resulting in Order for Out-of-State Residential School

In Re: Pembroke Public Schools, BSEA # 12-0507 (Berman 2012); 18 MSER 205

In March 2012, Hearing Officer Berman ordered Pembroke to "locate or create ...a fully-integrated language-based program designed to meet the needs of children with at least average intelligence who have severe dyslexia, and are several years behind their grade level in basic reading and writing skills." The hearing officer also ordered that the placement provide a minimum of daily, individualized Orton-Gillingham reading tutoring. At the time of the initial hearing, Carroll School, Landmark School, and Learning Prep School all had been explored and determined to be inappropriate for different reasons.

After receiving the hearing decision, Pembroke proposed placing Student in the South Shore Collaborative's Language Enhancement Program (LEP). Parents responded by filing a Motion to Enforce the Decision and Order, contending that the LEP placement did not satisfy the requirements of the original order. Hearing Officer Berman conducted a one-day hearing to determine whether Pembroke's proposal complied with her March decision.

The hearing officer concluded that the LEP placement simply did not match the program description she articulated in her March 2012 decision. Although clearly the South Shore Collaborative was willing to adjust its program to comply with the BSEA decision, the hearing officer concluded that Student cannot afford such an experiment. This Commentator agrees. Student, who is of at least average intelligence, is entering the 7th grade reading at a 3rd grade level and thus needs a school program where he can hit the ground running. The hearing officer ultimately took the placement decision into her own hands, awarding placement as a residential student at the Kildonan School in New York, which always had been the parents' preferred placement.

DECISIONS

No Witnesses for Parents, Other Than Parents, Dooms Bid for Private Day School, But Parents Obtain Compensatory Education And Tutoring Reimbursement Due to "Child Find" Violation

In Re: Amherst-Pelham Regional School District, BSEA # 11-9418 (Berman 2012); 18 MSER 126

At the time of hearing, Student was an 8th grader of at least average cognitive ability, with ADHD and a language-based learning disability that interfered with his ability to read, write, attend,

1. A colleague of this Commentator represented Silver Lake in this matter.

and organize. Parents filed for hearing seeking reimbursement for their unilateral placement of their son at the White Oak School, a state-approved school for publicly funded students. In the years preceding the unilateral placement, Student had attended a private, non-special education school.

Parents obtained a private evaluation that recommended Student's continued placement at White Oak School, as it best met Student's needs. However, the evaluators noted that if student were to be educated elsewhere, he required substantially separate programming, with limited mainstreaming, with the possible exception of a supported science class. When the public school Team met to consider this evaluation report, the Team proposed an IEP that provided all academic classes and services outside of the general education setting, including organization/study skills and social skills instruction.

To this Commentator, in reading the decision, it quickly became apparent that the public school had prevailed on the placement issue. The first give-away was the list of those present at the hearing. There was not a single witness for the parents other than the parents themselves. Not surprisingly, parents are unlikely to win at hearing if there is no one to corroborate their opinion about their child's educational programming needs. However, in this case, even if parents had called their private evaluators as witnesses, it is unlikely that the private evaluators would have saved the day. That's because neither evaluator appeared to have observed the public school program or the White Oak School program. Moreover, according to the hearing officer, the public school's IEP "essentially adopted and incorporated the evaluation results" of the private evaluators. If that's the case, then the public school proposal, at least on paper, is reasonably calculated to provide a free, appropriate public education. Finally, in this Commentator's opinion, another "strike" against the parents' position was that they never gave the public school the chance to educate their child.

But, all was not roses for Amherst Pelham. The public school had a misstep way back in 2007. At that time, parents informed a school representative, who is now the Interim Director of Student Services, that they were interested in the name of a tutor since a private evaluator had diagnosed Student with dyslexia. Amherst recommended a tutor whom the parents then hired at their expense. The public school, however, did nothing more, thus committing a "child find" violation. The hearing officer correctly concluded that the public school should have followed-up this conversation with a referral for an evaluation or, at a minimum, notified the parents of their right to make a referral. The hearing officer characterized this as a substantial violation as this likely delayed a special education eligibility determination by three years. Given the 2-year statute of limitations under IDEA, the parents were unable to reach all the way back to 2007. However, they were able to get relief for a period exceeding one year, with the hearing officer ordering that the Team determine the specific compensatory services. The hearing officer also ordered Amherst Pelham to reimburse parents for their tutoring expenses for the 2 years preceding the filing of the hearing request.

Parents Fail to Convince Hearing Officer That Son Is Eligible for an IEP or Section 504 Plan

In Re: Ford Charter School, BSEA # 11-5882 & 12-2883 (Scannell 2012); 18 MSER 179

Cole is an 8th grader at Ford Charter School, where he has attended school since 6th grade. It is undisputed that Cole has anger control issues, can act impulsively, and, at times, has used inappropriate and sexualized language and behavior toward his peers. What is disputed is whether this translates into eligibility for either an IEP or a Section 504 plan. Parents spent 4-days at hearing trying, but failing, to establish such eligibility.

The story begins back in spring of 2010 when Cole engaged in two separate instances of inappropriately touching other students. The charter school developed a safety plan, which Cole's parents consented to, that provided that Cole would be on in-school suspension until the charter school completed a risk assessment. In this Commentator's opinion, this safety plan was risky as parents could have claimed that they felt coerced to agree to it. Nevertheless, the story continues with the parties meeting to consider the completed risk assessment. The resulting agreed-upon plan was to continue the safety plan into the start of the next school year. Ultimately, however, the safety plan continued in place longer than expected as the parents pursued their own risk assessment, which the charter school funded.

The two risk assessments, including the parents' own risk assessment, as well as additional testing done by the charter school, simply did not support that Cole has a disability as defined by the special education laws or a physical or mental impairment under Section 504. While parents submitted letters from Cole's providers reflecting diagnoses such as "adjustment disorder with anxiety" and "disruptive behavior disorder," the Hearing Officer correctly concluded that these diagnoses, in and of themselves, do not mean that Cole has an emotional impairment as defined by the special education laws or a mental impairment under Section 504. Cole's own treating physician also considered, but rejected, an ADHD diagnosis.

The hearing officer took the analysis one step further and considered under the special education laws whether Cole was making effective progress and under Section 504 whether there was a substantial limitation of a major life activity. The hearing officer concluded Cole was making effective progress not only academically but also socially and emotionally. Testimony at the hearing revealed Cole had friends in school and strong relationships with many school staff. Also, the number and frequency of his behavioral problems had decreased over time. Under the Section 504 analysis, the hearing officer concluded that, even assuming a mental impairment, the evidence was "overwhelming" that there was no substantial limitation of a major life activity.

This Commentator feels like a broken record in commenting that the outcome here was predictable just by looking at who was present at the hearing. Once again, parents went to hearing with no one testifying on their behalf, and they lost. Perhaps, however, the parents had no choice as it appeared that neither the parents' own risk assessor nor treating physician supported the existence

of a disability. If that's the case, Cole's parents should have had serious reservations about going to a hearing.

To this Commentator, it was quite refreshing to read that the parents' own risk assessor wrote correspondence to the parents stating that the charter school's safety plan was effective and suggesting that Cole's parents stop sharing information with Cole about conflicts between them and the charter school. Equally as refreshing was the hearing officer's statement that, "[n]ot every student who exhibits inappropriate behavior has a defined disability pursuant to special education laws requiring special education services."

Order for Residential Programming for Remaining Years of Student's Special Education Eligibility Also Includes Helpful Guidance about What Constitutes Unlawful "Predetermination" by Public School Team

In Re: Amherst-Pelham Regional School District, BSEA # 12-1264 (Crane 2012); 18 MSER 187

Student is a 20-year old young man who is diagnosed with autism, pervasive developmental disorder, severe mental retardation, chronic encephalopathy, and von Willibrand Syndrome. Parents sought and obtained an order for a residential school. Much of this decision is devoted to a recitation of Student's lack of discernable progress in the various areas Amherst-Pelham's IEPs have been targeting for years. While typically progress is measured in comparison to a student's individual potential, here, all attempts to measure Student's intellectual ability had failed because of Student's limited communication skills. The hearing officer, however, was persuaded by the testimony of the parents' educational consultant that Student had the potential to make "substantially greater progress" than he had made, including in his areas of greatest need, communication and toileting. Corroborating this testimony were reports written by three other evaluators that either expressly or impliedly supported the proposition that Student was capable of making progress if Student received an appropriate educational program. Amherst-Pelham offered no evidence to rebut the educational consultant's opinion, leaving the hearing officer with little choice but to find as he did.

The hearing officer noted that Student's lack of progress was due to a number of shortcomings, many of which are capable of remediation. The shortcomings included too many staff providing services as well as turnover of key staff, causing a lack of consistency of instruction. Also, there was evidence that Amherst-Pelham failed to provide all IEP services consistently and that Student's receipt of services in an isolated manner limited his opportunity to learn from, and with, his peers. Finally, the hearing officer noted that the strained relations between parents and school staff contributed to the limited progress. Given, however, that Student's entitlement to special education services ends in December 2013, the hearing officer concluded that there was insufficient time for Amherst-Pelham to remediate its shortcomings and instead ordered placement at a residential school.

If you thought the order of a residential school was the end of the case, you were wrong! For those readers who like drama, this hearing provided soap opera-like moments, compliments of a former Team chairperson who testified against Amherst-Pelham. Some of the dirty laundry aired included the assertion that the chairperson's supervisor attended pre-Team meetings and instructed school Team members about what they should say at upcoming Team meetings. The former employee also testified that both she and Student's former teacher were concerned that Student's programming was too socially isolating. She asserted that Amherst failed to implement IEP services and had inconsistent service delivery due to high staff absenteeism and high staff turnover. Amherst-Pelham tried to attack the former employee's credibility by revealing that Amherst-Pelham had not renewed her contract due to unsatisfactory work. However, the hearing officer determined that Amherst only had established the potential for biased testimony and, when given the chance to offer rebuttal to the former employee's testimony, no rebuttal was forthcoming.

As a result of the former Team chairperson's testimony about pre-Team meetings, the decision contains helpful guidance about what constitutes unlawful "predetermination." In a nutshell, school officials must come to Team meetings with an "open mind," but that does not mean that school officials are precluded from giving thought to services and placement in advance of a Team meeting. A school district is not prohibited "from discussing the student and how his or her needs may be met without the parent present." What is prohibited, though, is what the former Team chairperson alleged occurred. That is, an Amherst-Pelham supervisor telling staff that they could not agree at the Team meeting to direct services from a behaviorist.

The hearing officer also concluded that Amherst had failed to provide appropriate services for the two-year period before the parents filed the hearing request. As a result, the hearing officer ordered that, when the IEP at issue expired, Amherst is obligated to continue to provide residential services for the remaining nine months of Student's eligibility.

Hearing Officer Finds Parents' Choice of Private Non-Special Education Boarding School Unreasonable Since Student Received No Specialized Instruction Despite Having Substantial Special Education Needs

In Re: Duxbury Public Schools, BSEA # 11-7847 (Crane 2012); 18 MSER 209

Parents filed for hearing seeking reimbursement for their daughter's senior year at the New Hampton School for the 2009-2010 school year. Student attended the Duxbury Public Schools through 4th grade. Duxbury then funded Student's placement at the Learning Prep School through 8th grade. Student returned to Duxbury High School for 9th grade but skipped a substantial number of classes. Parents then explored other options for Student, including New Hampton, a private boarding school in New Hampshire. Duxbury and Parents negotiated a settlement agreement whereby Duxbury agreed to fund New Hampton for the next three years, with the understanding that Student would be graduating at the end of the three years, thus terminating her entitlement to special education services. Ultimately, however, Parents had Student repeat 9th grade as New Hampton recommended, meaning that Student did not graduate on the timetable originally envisioned. Consequently, pursuant to the settlement

agreement, placement pending appeals for 12th grade was the placement the Duxbury Team proposed. Duxbury proposed IEPs offering in-district programming, and Parents kept Student at New Hampton for her senior year.

Typically, this fact pattern would lead to an initial inquiry about whether Duxbury's IEPs were reasonably calculated to provide FAPE. If the IEPs did not offer FAPE, then the hearing officer would analyze whether the parents' unilateral placement was appropriate. However, as authorized by the First Circuit, the hearing officer decided to tackle the second inquiry first. Here, the hearing officer actually used the parents' privately funded neuropsychological evaluations by Dr. Castro against them, which this Commentator believes was appropriate. The hearing officer read Dr. Castro's evaluations as reflecting that Student had "wide-ranging and substantial special education needs" that required specialized instruction. In fact, Dr. Castro's own testing reflected that after three years at New Hampton, Student was having "increased difficulty with math and reading" and only showed a year's growth in reading decoding in approximately four years. Student's own testimony supported the conclusion that she received no special education services her senior year as she received no more, and no less, than was available to all other students. The hearing officer cited to a number of First Circuit decisions articulating that, for reimbursement purposes, it insufficient for parents to choose a school where their child can make academic progress. Instead, reasonableness of the parents' choice "depends on the nexus between the special education required and the special education provided." Bottom line is that the hearing officer concluded that the parents had not met their burden of establishing that Student's extensive special education needs were addressed appropriately or that she attained any demonstrable benefit in her areas of special need. Again, as with other cases this quarter, the parents did not call anyone outside of their family as witnesses on their behalf. Unless such lay persons have specialized education or training that is educationally relevant to the issue at hand, such testimony is not particularly compelling, as was the case here.

Although not required, the hearing officer also considered whether Duxbury's IEPs were reasonably calculated to provide FAPE. The hearing officer noted that Duxbury offered expert testimony of school staff that reflected that the IEPs were appropriate. Parents offered no expert testimony to rebut Duxbury's testimony. Although Parents did submit open letters written in support of the New Hampton placement for Student, given that the authors of the letters did not testify, the hearing officer properly accorded them little weight.

Hearing Officer Orders Extensive Publicly-Funded Independent Evaluations to Assist in Answering Narrow Issue in Dispute and Looks beyond Narrow Issue in Concluding Boston Has Denied Student FAPE

In Re: Boston Public Schools, BSEA # 12-7614 (Byrne); 18 MSER 224

Parents filed for hearing on the narrow issue of whether Wilma requires a 1:1 paraprofessional to assist her in all educational settings in order to receive a FAPE. Wilma, who is completing the 8th grade, is legally blind and "has difficulty with reading mechanics and comprehension, math skills, memory, concentration, focus, self regulation and modulation, and social pragmatics." In short, this decision is not Boston's moment to shine in the sun. Although the issue in dispute was about the need for a 1:1 paraprofessional, unfortunately for Boston, plenty of information came forward that did not paint Boston in a favorable light. Boston's shortcomings included: (1) a 5-month delay in issuing an IEP, (2) a failure to propose formal behavioral observations or evaluations to explore parent and teacher concerns about Wilma's inappropriate classroom behaviors, (3) the failure to circulate Wilma's behavior intervention plan referenced in her IEP to her teachers, (4) the failure to reconvene the Team to discuss a report from LADDERS recommending a 1:1 paraprofessional, (5) the apparent failure to collect data contemporaneously to support the contention that Wilma made noticeable behavioral progress during the 2011-2012 school year, and (6) an N-1 form that did not do what the form is supposed to do, which is to give parents notice of what is being proposed and rejected, and why. And, if that weren't enough, Wilma, who used a laptop for "everything," had been without a functioning laptop for at least 4 weeks. No one testifying for Boston seemed to know anything about how Wilma had been able to access the curriculum without the laptop or who is responsible for ensuring that Wilma had the working laptop she needed. These findings did not address the issue that was before the hearing officer, but they are what led the hearing officer to conclude that Boston had failed to ensure that Wilma received FAPE during the 2011-2012 school year.

As for the issue in dispute, the hearing officer concluded that she needed additional information to decide if Wilma needs a dedicated paraprofessional. Consequently, she ordered Boston to fund an independent evaluation that, at a minimum, included a functional vision assessment, a functional behavioral evaluation, psychoeducational and academic assessments, assistive technology assessment, and an observation of Wilma in school and at least one observation in the community. Upon receipt of these evaluations and any necessary testimony, the hearing officer then will rule on the paraprofessional issue.

Hearing Officer Finds School's Failure to Refer Student for Evaluation Was "Gross Misjudgment," Which May Result in Federal Court Order for Money Damages Under Section 504

In Re: CBDE Public Schools, BSEA # 10-6854 (Crane 2012); 18 MSER 147

According to the hearing officer, this case is perhaps the most intensively litigated case he has seen in his 12 years as a BSEA hearing officer. As the facts unfold, you will see why.

In the summer before starting 9th grade, Student, who then was a regular education student, had a close cousin die in a pedestrian-car accident. On the heels of this huge loss, in November of 9th grade, a CBDE employee statutorily raped Student. In March of 9th grade, Student's parents learned of the rape and then met with CBDE staff to notify them of the rape. By the date of the rape disclosure, the CBDE employee already had been placed on paid administrative leave pending an investigation of alleged misconduct involving other students. Less than two weeks later, CBDE terminated the staff member's employment. This staff

member subsequently pleaded guilty to statutory rape of a child and related offenses.

The decision goes into great detail about the chronology of Student's academic, social and emotional well-being given that the parents were claiming that CBDE should have referred Student for an evaluation to determine eligibility for an IEP or a Section 504 plan. In the decision, Student is described generally as being fun-loving and affectionate but also often testing boundaries, being mischievous, lacking motivation to do well academically, and having had pervasive issues of family discord. In 7th and 8th grade, Student earned relatively good grades, with a few minor behavioral problems at school and home. However, in the fall of 9th grade, Student was having verbal outbursts, leaving class without permission, uncontrollably crying in class, and demonstrating uncontrollable anger. CBDE staff thought this was an outgrowth of Student's struggle to deal with the grief surrounding the loss of her cousin. By January of 9th grade, Student was demonstrating anger and sadness more frequently and more extremely. For example, she pushed, yelled and screamed at a female peer in the hall. Student's guidance counselor wrote an email to Student's mother that Student seemed "stuck" in the grieving process, which was negatively impacting Student in school. In March of 9th grade, Student disclosed the rape to CBDE, which the Student's school adjustment counselor testified was traumatic for her, as was the rape. Despite all of Student's school-based struggles and the added knowledge that Student was suffering from the trauma of a rape by a trusted authority figure, no one from CBDE thought to refer Student for an evaluation.

Student's deterioration continued into 10th grade. In January of 10th grade, Student was admitted to a Community Based Acute Treatment (CBAT) program where a psychiatrist diagnosed her with post-traumatic stress disorder, mood disorder NOS, and polysubstance dependence. When the CBAT discharged Student in February of 10th grade, Student's parents shared the discharge summary containing these diagnoses with CBDE, yet no evaluation referral ensued. Shortly thereafter, Student's mother requested that CBDE evaluate Student. While Student was in court a month later for a parent-filed CHINS petition, Student was involuntarily hospitalized in a psychiatric hospital for nine days. Student stepped down from the hospital to a different CBAT residential program. While there, Student's parent filed for a BSEA hearing seeking a determination that Student is eligible for special education and requires a residential placement to meet her educational needs. Student's parents also sought monetary relief for the asserted "child find" violation.

Through the Team process, the placement dispute was resolved, with the Team proposing a residential educational program for Student. "All" then that remained for the BSEA hearing officer was to make findings of fact relevant to the issue of whether CBDE had committed "child find" violations under federal and state laws. The judge in the multi-million dollar lawsuit pending in federal district court against CBDE and certain CBDE employees then will review these BSEA findings. Given that the First Circuit has determined that money damages are barred under IDEA, the focus of this decision is on compensatory damages under Section 504. The decision reflects that the First Circuit has held that there may be a claim for money damages under Section 504, but only if the disability discrimination was "intentional." The decision references various court decisions regarding what constitutes the requisite "intentionality." Here, the hearing officer concluded that "the First Circuit has indicated a preference" for a bad faith or gross misjudgment standard, which generally is understood to be a higher standard than a deliberate indifference standard.

The decision reflects that in the months preceding the rape disclosure, CBDE was motivated to help Student and had been providing a number of regular education services and accommodations. CBDE argued that it had the right and responsibility to implement such regular education instructional supports prior to referring Student for an evaluation. The hearing officer resoundingly dismissed use of Response to Intervention (RTI) as a defense to a child find violation, citing to state and federal authority for the proposition that "RTI does not justify delaying or denying the evaluation of a child who, because of a disability, needs or is believed to need special education or related services."

After 8 days of hearing, the hearing officer concluded that CBDE had violated its child find obligations when they failed to refer Student for an evaluation after learning of the rape. CBDE staff was immediately aware of the likely traumatizing effect of being raped by a person of trust and authority, especially as this occurred in close proximity to the death of Student's cousin. In addition, CBDE knew Student had been struggling socially, emotionally and academically all year, despite accommodations and counseling. Although the hearing officer found that, at all times, CBDE staff acted in good faith and never purposely violated Student's child find rights, he concluded that the failure to refer could not be supported by an accepted professional judgment or standard. As a result, the hearing officer ruled that this "gross misjudgment" supports the possibility that a federal court judge will award monetary relief for this "child find" violation. The hearing officer also determined that what began as a failure to act had, a year later, become a "blatant disregard of Student's child find rights." By that time, Student not only continued to have emotional, behavioral, and academic difficulties but also had been psychiatrically hospitalized and diagnosed with PTSD and mood disorder, NOS. Still, CBDE did not refer Student for an evaluation.

The hearing officer concluded that Student suffered substantial educational harm as a result of the child find violation but was unable to make further findings about the extent of the harm. Given the timing of when Student should have been referred for an evaluation, the hearing officer determined that Student was likely denied appropriate special education and related services beginning six weeks into the 10th grade until Student was placed residentially in late May of 10th grade.

This high-stakes case will be a loud wake-up call to public school employees about the need to refer a student for an evaluation if there is reason to suspect that a student has a disability and is in need specialized instruction, related services or accommodations. CBDE missed major red flags that should have prompted a

referral (e.g. rape disclosure, psychiatric diagnoses following CBAT admission). School staff should know that major unfortunate life events, such as a psychiatric hospitalization, should trigger a referral for an evaluation. With the parent's consent, the public school will be able to evaluate in an effort to obtain a solid understanding of what is going on in a student's life, rather than surmising things from immediately available information. And, if the parent refuses to consent to evaluation, the school district is protected given the offer to evaluate.

DECISIONS BASED ON DOCUMENTS ONLY

In Re: Northampton P.S. v. *Greenfield P.S. & DESE*, BSEA #10-1393 (Figueroa 2009); 18 MSER 220

No, it's not a typo. This quarter's cases to review included a decision issued back in 2009 but never published. The dispute here was which school district should be financially responsible for Student's residential placement. Student's mother lived in Northampton when her young son was placed in the temporary custody of DCF. Northampton wrote a residential IEP for Student. Relatively shortly thereafter, Student's mother stayed for 3-4 weeks with her sister in Greenfield, allegedly sleeping on the couch, before being incarcerated.

Greenfield and DESE took the position that Student's mother was homeless while in Greenfield, therefore her prior residence in Northampton continued to be responsible for Student's educational programming. Northampton tried to argue that Student's mother resided in Greenfield, thus ending Northampton's responsibility for Student's educational programming. The hearing officer correctly sided with Greenfield and DESE as there simply was no evidence that Student's mother had intended to make Greenfield her legal, permanent home. ■