

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

In re: Uma¹

BSEA #2103885-C

**RULING ON PARENTS' MOTION TO ENFORCE COMPLIANCE WITH HEARING
OFFICER'S ORDER**

This matter comes before the Hearing Officer on the *Motion to Enforce Compliance with Hearing Officer's Order (Motion to Enforce)* filed by Parents on July 29, 2021.

RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On June 3, 2021, after an evidentiary hearing, the Bureau of Special Education Appeals (BSEA) issued a final decision (*Decision*) in the case that is the subject of this ruling. The Conclusion section of the *Decision* states as follows:

After reviewing the record in its entirety, I conclude that Parents have proven that the IEP proposed for Uma for the period from May 21, 2020 to May 20, 2021, as amended on or about October 29, 2020, was not reasonably calculated to provide her with a [free appropriate public education]. Parents are entitled to reimbursement for Uma's tuition and associated costs from November 5, 2020 through the end of the 2020-2021 school year. They are not entitled to reimbursement for the summer of 2020.

The associated Order directed Amesbury Public Schools (Amesbury, or the District) "to reimburse Parents for costs associated with Uma's attendance at Merrimac Heights Academy during the 2020-2021 school year."

On July 29, 2021, Parents filed the instant *Motion to Enforce* pursuant to Rule XIV of the *BSEA Hearing Rules*, alleging that Amesbury had failed to comply with the *Order*. Amesbury had not, to date, reimbursed Parents for any of the expenses enumerated in the *Order*. Further, the District had indicated both that it intended to appeal the *Decision* and that it would not pay any money to Parents until the appeal had been exhausted.

On August 5, 2021, Amesbury filed an *Opposition to Parent's Motion*, asserting that because the District, after Parents filed their *Motion to Enforce*, had filed both an appeal of the *Decision* and a *Motion to Stay the BSEA's Order* before the United States District Court, the BSEA should take no action with respect to Parents' *Motion*. Amesbury noted, correctly, that the commencement of an action does not operate as a stay of enforcement of an agency decision, that an agency may stay enforcement, and that a reviewing court may order a stay. Amesbury

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

then argued, however, that the BSEA should take no action on Parents' *Motion to Enforce* because the District Court is the proper body to determine whether a decision should be stayed.

During a Conference Call that took place on August 16, 2021, the parties agreed that they did not believe further briefing, oral argument, or an evidentiary hearing was necessary. In response to my request for an evidentiary basis on which to make any findings or conclusions, Parents filed Mother's Affidavit on August 17, 2021. According to the Affidavit, as of the date it was filed Amesbury had not paid any of the reimbursement ordered by the BSEA, "refused to recognize Merrimack Heights Academy (MHA) as [Uma]'s 'stay put' placement," and had paid nothing toward Uma's continued placement at MHA.

On August 24, 2021, Amesbury filed its *Response*, maintaining its position that the Hearing Officer should take no action because the matter was actively before the federal court. According to the District, any order issued by the BSEA directing it to comply with the previously issued order would be "redundant and create[] no enforceable obligation on the District" because of the appeal.

As neither party has requested a hearing on the Motion, and as neither testimony nor oral argument would advance the Hearing Officer's understanding of the issues involved, this Ruling is being issued without a hearing pursuant to *BSEA Hearing Rule VII(D)*. For the reasons set forth below, Parents' *Motion to Enforce* is hereby ALLOWED.

DISCUSSION

A. *Legal Standards*

Pursuant to the Individuals with Disabilities Education Act (IDEA), a decision issued by the BSEA is final and must be implemented immediately, though it may be appealed to a court of competent jurisdiction.²

Massachusetts law provides a mechanism whereby a party contending that a BSEA decision is not being implemented may request that the Hearing Officer issue a finding of non-compliance and/or order compliance.³ To initiate this process, the party may file a motion that sets forth the areas of non-compliance, at which time the Hearing Officer may – but is not required to – convene a hearing of limited scope to determine the facts on the issue of compliance, any facts that may excuse performance, and any facts bearing on a remedy.⁴ Although BSEA Hearing Officers do not have the authority to enforce a decision or a corresponding Order,⁵ upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief.⁶ This relief may include referral of the matter to the Legal Office of the

² See 20 U.S.C. §1415(i)(1)-(2); 603 CMR 28.08(6).

³ See 603 CMR 28.08(6); *BSEA Hearing Rule XIV*.

⁴ See 603 CMR 28.08(6); *BSEA Hearing Rule XIV*.

⁵ See *A. R. v. New York City Dep't of Educ.*, 407 F.3d. 65, n.13 (2nd Cir. 2005) (recognizing that independent Hearing Officers "have no enforcement mechanism of their own"); *Hamilton Wenham Regional School District*, BSEA #2104095 (Kantor Nir 2021).

⁶ See 603 CMR 28.08(6); *BSEA Hearing Rule XIV*.

Department of Elementary and Secondary Education (DESE) or other office for appropriate enforcement action,⁷ as well as equitable remedies in the form of additional compensatory education and/or monetary reimbursement.⁸

B. *Application of Legal Standards*

Parents' assertion that Amesbury has failed to reimburse them for Uma's attendance at MHA during the 2020-2021 school year, in accordance with the *Decision* issued June 3, 2021, is uncontested. Although the District argues that the matter is properly before the District Court on appeal, nothing about that appeal deprives the BSEA of jurisdiction over the instant motion, or automatically operates as a stay. Other than the existence of an appeal and a pending motion for a stay in federal court, which are not unique to this case, Amesbury offers no particular facts that justify a departure from a school district's obligation to comply immediately with a final BSEA decision. Under these circumstances, I decline to stay enforcement of the *Decision* issued in this matter.

CONCLUSION

Parents have demonstrated, through the submission of uncontested facts, that Amesbury has not complied with the *Decision* in this matter, and the corresponding *Order*.

ORDER

Amesbury Public Schools is hereby directed to reimburse Parents, within 30 days of the issuance of this *Ruling*, for tuition and costs associated with Uma's attendance at Merrimac Heights Academy from November 5, 2020 through the end of the 2020-2021 school year.

By the Hearing Officer:⁹

 /s/ Amy M. Reichbach

Dated: September 13, 2021

⁷ See 603 CMR 28.08(6); BSEA *Hearing Rule* XIV.

⁸ See, e.g., *In Re Whitman-Hanson RSD*, BSEA #2007539-C (Berman 2021) (where school district was unable comply with substantive decision despite diligent efforts, due to a shortage of qualified Teachers of the Deaf, Parents were entitled to full-time placement in out-of-district preschool program); *In Re Dracut Public Schools*, BSEA #08-5330c, 15 MSER 178 (Crane 2009) (noting that district had been ordered to compensate transition consultants at a particular rate after a finding of non-compliance); *In Re Chicopee Public Schools and Nelida*, BSEA #04-0093, 10 MSER 276 (Byrne 2004) (finding school district in non-compliance with substantive decision and ordering reimbursement for two round trips per day to private school, including time that student was not in the car).

⁹ The Hearing Officer gratefully acknowledges the research assistance of legal intern Marion Schulz in the preparation of this Ruling.