RULING ON MOTION FOR SUMMARY JUDGMENT

This Ruling addresses the Chelmsford Public Schools’ (hereafter, Chelmsford) *Motion for Summary Judgment*. Through its Motion, Chelmsford seeks to reverse a determination by the Massachusetts Department of Education (hereafter, DOE) assigning Chelmsford as having fiscal responsibility for Student’s education during the 2001-2002 school year.

Procedural History and Facts

The procedural history and relevant facts are not in dispute.

Student is eligible for special education and related services. Pursuant to an accepted individualized education program (IEP), Student is currently enrolled at the Riverside School, which is a residential school located in Lowell, Massachusetts.

By letter dated September 4, 2001, following a request from the Massachusetts Department of Social Services for an assignment of responsibility, DOE determined that the Lowell Public Schools (hereafter, Lowell) was both programmatically and fiscally responsible for Student’s education services.

By letter dated September 18, 2001 to DOE, Lowell sought review of DOE’s assignment of responsibility to Lowell and provided DOE with certain information relative to Student and his father (hereafter, Father). DOE did not issue a revised school district assignment in response to Lowell’s letter.

By letter of May 10, 2002, Lowell filed with DOE a *Request for Clarification* regarding DOE’s assignment of responsibility to Lowell. Through its *Request*, Lowell submitted to DOE information regarding Parents’ custody rights, as well as information regarding
Father’s residence. In the letter accompanying the Request, Lowell argued that had DOE been aware of this information when it made the assignment of responsibility on September 4, 2002, DOE would have found Chelmsford to be fiscally responsible for Student’s education through the 2001-2002 school year, and that Lowell would be fiscally responsible beginning with the 2002-2003 school year.


On June 12, 2002, Chelmsford filed with the Bureau of Special Education Appeals (hereafter, BSEA) a Request for Hearing, contesting BSEA’s revised assignment letter of May 21, 2002 and requesting a finding by the BSEA that Lowell is fiscally and programatically responsible for Student’s education for the 2001-2002 school year.

On June 21, 2002, Chelmsford filed a Motion to Join the Department of Education as a party in this matter. Neither DOE nor Lowell opposed the Motion to Join, and it was allowed by Order of the Hearing Officer dated July 1, 2002.

On July 16, 2002, Chelmsford filed a Motion for Summary Judgment and accompanying Memorandum in support of its Motion. On July 17, 2002, DOE filed a Motion for Enlargement of Time to File Response, which the Hearing Officer allowed. On July 26, 2002, Lowell filed a Memorandum in opposition of Chelmsford’s Motion for Summary Judgment, and on July 30, 2002, DOE also filed a Memorandum in opposition to Chelmsford’s Motion. A telephonic Hearing on the Motion for Summary Judgment was held on August 2, 2002.

**Discussion**

1. **Issue in Dispute.**


The issue presented through Chelmsford’s Motion for Summary Judgment is whether Lowell may request and obtain reconsideration of a DOE assignment of school responsibility where Lowell has submitted the request for reconsideration approximately eight months after DOE’s letter of assignment.
2. **Regulatory Framework.**

The Massachusetts Department of Education (DOE) has authority, pursuant to state special education regulations, to “assign . . . a city, town, or school district as the parent’s district when the father’s, mother’s, or guardian’s residence or history is in dispute, or the student is not receiving services.”¹

The regulations allow a school district the opportunity to provide additional information to DOE after assignment; and within thirty days of the assignment, the assigned school district may appeal DOE’s decision to the BSEA. The regulatory language is as follows:

> Using the above criteria, the Department shall notify in writing the assigned school district(s), who shall be afforded the opportunity to present any additional information that would bear upon the Department’s determination. Upon notification of responsibility for provision of special education to a child under this paragraph, the school district(s) shall immediately begin to provide such services in accordance with the requirements of these regulations. Until such notification, the school district that had been responsible for providing special education to such child under these regulations shall continue to be responsible. The assigned school district(s) may seek review of the Department’s assignment with the Bureau of Special Education Appeals, provided such request for review is filed within 30 days of receipt of the Department’s assignment.²

3. **Chelmsford’s Arguments.**

Chelmsford takes the position that once the thirty-day appeal period has elapsed, a school district may no longer request or obtain reconsideration from DOE. Therefore, DOE should not have responded to Lowell’s May 10, 2001 request for reconsideration (the Request for Clarification), and DOE’s revised assignment based on the May 10th request for reconsideration should be reversed. Chelmsford makes several arguments to support this position.

First, Chelmsford reads together the two underlined regulatory provisions (quoted above) to mean that the period of time during which a school district may “present any additional information that would bear upon the Department’s determination” is limited by the time period during which the school district may file with the BSEA. In effect, the thirty-day time period would apply equally to filing with the BSEA and seeking reconsideration from DOE.

Chelmsford’s second argument parallels its first. Chelmsford explains that were this regulatory language read differently, so as to allow reconsideration by DOE regardless of the thirty-day appeal period to the BSEA, then the thirty-day appeal clock would be “re-set” each time reconsideration were requested and DOE made a new decision. In effect, DOE

---

¹ 603 CMR 28.03(4)(f) (italics in original).
² 603 CMR 28.03(4)(h) (emphasis supplied).
would be enlarging the thirty-day time period for appeal to the BSEA, which it has no authority to do.

Chelmsford notes that this process, which might include repeated requests by each school district for reconsideration, could delay, perhaps indefinitely, a final resolution of a school district’s fiscal responsibility. Chelmsford then concludes that DOE’s practice violates state and federal law: “Such an administrative policy violates Massachusetts Special Education Regulations, and also enables Lowell to circumvent its fiscal and programmatic responsibility to the Student in violation of both federal and state law, as well as public policy, resulting in a failure to resolve the residency dispute in a timely manner, as contemplated by the regulations.”

4. Analysis of the Regulations.

At the outset, an analysis of the disputed issue requires an interpretation of the regulatory language (603 CMR 28.03(4)(h)) quoted above. I will then consider whether that interpretation is inconsistent with (and therefore violates) the state special education statute (MGL c. 71B), the federal special education statute (the IDEA) or federal regulations under the IDEA.

The crux of Chelmsford’s argument is that the regulatory language allowing for reconsideration by DOE and the regulatory language allowing for appeal to the BSEA within thirty days are inextricably linked. However, a plain reading of the words themselves does not necessarily lead to this conclusion.

The part of the regulations setting forth the right of a school district to obtain reconsideration from DOE does not include a time frame. The regulations simply state that the school district may provide additional information to DOE. The most straightforward reading of this regulatory language, on its face, is that DOE, when considering additional information, is not limited by any particular time constraints.

The thirty-day time period set forth in the regulations and relied on by Chelmsford applies, on its face, only to a school district’s appeal (to the BSEA) of DOE’s determination. The language reads as follows: “The assigned school district(s) may seek review of the Department’s assignment with the Bureau of Special Education Appeals, provided such request for review is filed within 30 days of receipt of the Department’s assignment.” There is nothing within this language that would indicate that the thirty-day period must apply to the time period for reconsideration by DOE.

I conclude that the regulatory language, on its face, provides no support for Chelmsford’s position that the thirty-day BSEA appeal period must be used as the time period for filing additional information and requesting a reconsideration from DOE.

---

In order to find guidance as to how the special education regulations may be correctly understood, I turn to other contexts in which decisions are reconsidered and appealed. The special education regulations discussed above contemplate reconsideration by DOE to review and possibly correct its initial decision in light of new information. An example of another entity using reconsideration for the same purposes is the courts.4

The procedural rules governing practice before the federal courts are detailed and comprehensive, having been extensively considered over a period of many years. The appeal period from a decision of the federal district court to the Court of Appeals is generally thirty days and therefore comparable to the thirty-day appeal period from a DOE determination to the BSEA.5

However, the period during which the federal district court may re-consider its own decision is much longer. Rule 60(b) of the federal Rules of Civil Procedure provides that a motion for reconsideration based upon newly discovered evidence may be filed “within a reasonable time” but not more than one year after the court’s decision.

One may assume that the drafters of the federal Rules specifically considered the question of how long to allow a party to request reconsideration and concluded that it would be appropriate to allow for reconsideration during a time period significantly longer than the thirty-day appeal period to the federal Court of Appeals. In fact, the Advisory Committee Notes to the federal Rules indicate that in 1946, the time period for seeking reconsideration was extended from six months to the current standard of one year.

The procedural rules governing state court procedures also allow for a party to move for reconsideration on the basis of newly discovered evidence. The time period for seeking reconsideration is the same as under the federal rules – “within a reasonable time” but not to exceed one year from the state court’s decision. The rule regarding reconsideration is separate and distinct from rules regarding the time period for appeal, which in general are significantly shorter.6

The comparison with court rules supports DOE’s understanding of the special education regulations that the time period for reconsideration should not necessarily be limited to the time period that is required for appeal to the BSEA.

I further note that the two regulatory provisions at issue (reconsideration by DOE and appeal to the BSEA) serve similar but different purposes. As is made clear by the regulatory language itself (and as explained by DOE’s attorney during the Motion hearing), reconsideration by DOE is to be based on additional information provided by the school district. It is not an opportunity for the school district simply to disagree with DOE’s

---

4 E.g., Publishers Resource, Inc. v. Walker-Davis Publications, Inc., 762 F.2d 557, 561 (7th Cir. 1985) (motion for reconsideration is intended to be used to present newly discovered evidence).
6 Massachusetts Rules of Civil Procedure, Rule 60(b).
assignment decision or to make additional arguments in the hope of persuading DOE to change its mind. The appeal to the BSEA, on the other hand, is an opportunity for the school district to present any evidence and make any legal arguments that the DOE decision was incorrectly decided and should be reversed. This analysis supports DOE’s understanding of the two regulatory provisions as being independent of each other, rather than viewing the time constraints for appeal to the BSEA as limiting the time for reconsideration by DOE.

For these reasons, I conclude that the regulations are correctly understood as allowing a school district to provide additional information (and thereby seek reconsideration by DOE) without constraint by the thirty-day rule regarding appeal to the BSEA.

I now consider whether these regulations, as so understood, may be upheld.

5. Validity of the State Regulations.

The special education regulations, on their face, include no limitations on requesting reconsideration regardless of how much time has elapsed and regardless of whether the school district could have easily discovered and presented the new information at an earlier time. Chelmsford argues that this open-ended process for reconsideration unfairly prevents finality of decision because any determination can be further re-considered. This leaves a school district continually vulnerable to becoming financially responsible for a special needs student and potentially jeopardizes timely payment of special education services. I will assume, for purposes of this discussion, that Chelmsford’s criticisms are valid.7

The fact that the regulations may have deficits is not sufficient reason, by itself, for me to ignore or override the DOE regulations. DOE’s regulations interpreting and implementing the state special education statute (MGL c. 71B) are entitled to “substantial deference.”8 They may be rejected if “contrary to the plain language of the statute and its underlying purpose.”9

Although Chelmsford argues that DOE’s interpretation and implementation of the regulations violates state and federal law, Chelmsford has not pointed to any particular language, nor am I able to find any, within the state special education statute, federal law and regulations from which one might conclude that DOE may not allow reconsideration for an extended period of time. Moreover, for reasons explained immediately below, allowing an extended period of time for reconsideration is consistent with an underlying purpose of the state special education statute (MGL c. 71B) as it applies to school district assignment.

---

7 In response to Chelmsford, DOE argues that a reasonableness standard should be read into the regulatory language regarding reconsideration by DOE, with the result that not all requests for reconsideration would be entertained by DOE. Also, of course, a school district aggrieved by a new decision by DOE would have the right to appeal that decision to the BSEA.


In *Walker Home for Children v. Franklin*, the Massachusetts Supreme Judicial Court explained that DOE has been given the authority under MGL c. 71B, s.3 to adopt regulations in order to resolve the issue of residence “in situations in which a child's legal residence may be in some doubt.”\(^{10}\) The *Walker* decision explained that, under G. L. c. 71B, school district responsibility must follow the student’s residence, and therefore DOE’s “authority with respect to the assignment of fiscal responsibility is limited to the question of determining where a child resides.”\(^{11}\) The Court also noted that the residence of a minor child “generally is the same as the domicil [sic] of the parent who has physical custody of the child.”\(^{12}\)

Pursuant to this mandate, DOE assigns school district responsibility (and corrects erroneous assignments) on the basis of information it receives regarding the student’s/parents’ residence. As argued persuasively by DOE and Lowell, the regulatory language allowing for consideration of additional information from a school district during an extended period of time increases DOE’s opportunity to correct any decisions that may have been made upon incomplete or erroneous information and thereby bring DOE’s assignments of school district responsibility into compliance with MGL c. 71B. This strongly supports the need for DOE to consider additional information provided beyond the thirty-day time period for appeal to the BSEA.

For these reasons, I find that the DOE regulations at issue are consistent with the special education statute and its underlying purpose. I have heard no arguments (nor am I aware of any) as to why the DOE regulations would violate the federal special education statute and regulations. I therefore conclude that the regulations at issue in this dispute must be upheld.\(^{13}\)

**Order**

For these reasons, Chelmsford’s *Motion for Summary Judgment* is DENIED.

By the Hearing Officer,

_________________
William Crane
Dated: August 8, 2002

\(^{10}\) 416 Mass. 291, 296, 621 NE2d 376 (1993) (citations omitted).
\(^{11}\) Id. at 296-297 (citations omitted).
\(^{12}\) Id. at 295 (citations omitted).
\(^{13}\) I need not and therefore decline to determine the precise length of time during which DOE may consider additional information. As explained in footnote 7 above, DOE took the position at the Motion Hearing that the time limit for submitting additional information would be subject to an implicit rule of reasonableness. I only note that, in light of the federal and state procedural rules discussed above in footnotes 5 and 6 and the accompanying text, I find it reasonable for DOE to consider additional information submitted approximately eight months after its original assignment letter.