

**COMMONWEALTH OF MASSACHUSETTS
SPECIAL EDUCATION APPEALS**

Student v. Triton Regional School District

BSEA #1302663

DECISION

This decision is issued pursuant to M.G.L. c. 71B and 30A, 20 U.S.C. § 1401 et seq., 29 U.S.C. § 794, and the regulations promulgated under said statutes.

By agreement of the parties and pursuant to BSEA Hearing Rule XII, this matter is decided solely on the basis of documents that have been filed by Parents and that are marked as Parent Exhibits 1 through 33 and exhibits that have been filed by the School District and that are marked as School Exhibits 1 through 2, and approximately 30 minutes of recorded oral argument.

PROCEDURAL HISTORY

Parent requested a hearing on October 9, 2012 and a hearing was scheduled to occur on November 13, 2012 before hearing officer Raymond Oliver. The matter was administratively reassigned to the undersigned on October 16, 2012. The district's unopposed request for postponement, which was filed on October 17, 2012 was allowed on October 25, 2012 following a telephone conference call. During the October 24, 2012 telephone conference call the parties were able to reach agreement regarding the disposition of the case. A deadline was set for the submission of documents in the event that the parties did not follow through with their agreement. On November 6, 2012, counsel for the district sent a letter to the hearing officer indicating that the district had complied with the agreement it had made with the parents and requesting that the matter be dismissed. Parent objected to the district's request for dismissal and raised an issue that had not been in her request for hearing. The hearing officer issued a ruling denying the district's request for dismissal and allowing the parent additional time to amend her request for hearing to add the additional issue she sought to raise. Parent filed her amended hearing request on December 12, 2012 and the new hearing date was scheduled for January 16, 2013. The district's unopposed request to postpone the hearing was allowed and at the request of the Parent and the assent of the district the matter was scheduled for oral argument on February 11, 2013. The argument proceeded as scheduled and the record closed on February 11, 2013

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ISSUE

Whether Triton Regional School District has provided Parent with prior written notice of its decision not to provide Student with a laptop computer or an FM system by providing Parent with a written N1 form after Parent has requested that all documents be provided to her in audio format.

SUMMARY OF THE EVIDENCE

1. Parent's initial request for hearing included two issues. First, Parent alleged that the district failed to convene a Team meeting to review an outside evaluation and review rejected portions of Student's most recently proposed IEP. Second, Parent alleged that the district failed to provide her with prior written notice regarding its denial of her request that it provide Student with a laptop computer and an FM system. (P-1) Attached to Parent's request for hearing was a letter dated September 13, 2012 from Director of Special Education, David McGee. The letter was a response to a correspondence from Parent in which Parent had requested that Triton provide her with a "hard copy of the parent/student hand book...also provide in verbal format." Additionally, Parent had requested that Triton provide her with paper copies of the 2012-2013 home/school communication transmitted via e-mail and, "also in verbal format." Mr. McGee's response requested that Parent provide Triton with a letter from her treating physician specifying her medical diagnosis and indicating how the diagnosis impairs Parent's ability to read. (See attachments to Parent's Hearing Request.) Parent provided Triton with a letter from a physician and Triton contacted the physician to seek clarification about the letter. Mr. McGee informed Parent that her physician had did not have any training or credentials to diagnosis or treat anyone with a learning disability nor did he have any knowledge of Parent's learning disability other than that obtained from another medical doctor in his practice. Therefore, Triton sought additional documentation from Parent. (P-33) Parent refused to provide additional documentation. (P-33)
2. Parent filed a motion to require the district to convert all documents pertaining to BSEA # 1302663 into an audio format and to allow her to record all conference calls to prevent her from being at a disadvantage due to her disability¹. The hearing officer denied said motion during an October 24, 2012 telephone conference call informing Parent that the BSEA does not have jurisdiction to determine whether a district is required to provide a specific accommodation to a *parent* of a student with a disability. The hearing officer further informed Parent she had not raised that issue as part of her hearing request and encouraged the Parties to negotiate an acceptable resolution to the issue or seek resolution in a forum with pertinent jurisdiction. (See BSEA Order dated November 27, 2012.)

¹ Through her motion, Parent also requested that the BSEA decision be made "on the provided documents and written arguments, no in-person testimony." (See Parent's Motion dated 10/5/12)

3. The Team convened on November 5, 2012. (P-22, P-23) The Team agreed to update Student's Decoding/Encoding and Reading goals and change the service delivery grid to identify special education personnel. (P-24)
4. The district sent Parent an N1 form along with the proposed amended IEP. The N1 form indicated that Parent had requested that Student be provided with a laptop computer for his sole use and an FM system. The district did not agree to provide either based upon work samples, classwork, and data which indicated Student did not require those accommodations to access the curriculum. (P-24)
5. On or around November 26, 2012, the district's attorney sent a letter to the hearing officer informing her that the district had sent Parent an N1 form explaining the Team's denial of her request for a laptop computer and an FM system. Additionally, the district's counsel informed the hearing officer that the Team had convened on November 5, 2012. The district requested that the case be dismissed with prejudice as Triton had provided Parent with all of the relief requested in her hearing request. (See Ruling on District's Motion to Dismiss with Prejudice.)
6. Parent sent the hearing officer a correspondence dated November 14, 2012. She indicated that she was still awaiting provision of the N1 form from the district in audio format. She then cited to 34 CFR 300.503 and to a section of the Parent's Notice of Procedural Safeguards. (P-26)
7. The hearing officer denied Triton's Motion to Dismiss on November 27, 2012. The ruling cited to Parent's status as a pro se litigant and provided Parent with some latitude with respect to drafting of pleadings. Parent had not properly placed the issue of whether Triton had provided her with prior written notice in accordance with 34 CFR 300.503 in her hearing request. The hearing officer allowed Parent two weeks to file an amended request for hearing that included that issue.
8. Parent filed an amended hearing request on December 12, 2012. This hearing request included the issue of whether Triton was required to provide Parent with prior written notice of its refusal to provide Student with a laptop computer and an FM system in audio format as requested by Parent. (P-27)
9. In an affidavit dated February 4, 2013, Parent stated that in 1991 she received support services and accommodations and was permitted to audiotape classes at Middlesex Community College². Her affidavit also contains quotations from a neuropsychological report regarding Parent presumably dated January 14, 1992. The affidavit does not contain the name of the person who prepared the report or the context within which it was written. The record does not contain a copy of the report.³ Parent's affidavit states that in April 1996 she was permitted extended time

² None of the listed accommodations from 1991 included provision of all written documents in an audio format.

³ The excerpts provided by Parent include accommodations with respect to spelling and oral fluency, and a recommendation that Parent listen to recordings of correct pronunciation of technical terms to allow her to

on the National Dental Hygiene Board examination and a proctor was permitted to read portions of the test directions to her and read her answers back to her. Additionally, Parent's affidavit states that she has audiotaped all school meetings since June 2004 with the district's permission. Parent states that she provided Triton's Director of Special Education with documentation of a reading disability on October 3, 2012. The record does not contain a copy of any such documentation. Parent further states that in February 2010, in response to her request, the BSEA provided her with six publications from its website in audio format. Additionally, in the matter of BSEA #12-9421 Triton did not oppose her motion that all documents in that case be provided to her in audio format. (P-29)

10. Marion King, of Foxboro, Massachusetts, has known Parent for approximately seven years. During the time she has known Parent she has assisted Parent "in the writing process as she has submitted e-mails and letters to her child's school district" approximately 25 times. (P-30)
11. Brenda Beebe, of Sparta, New Jersey, has assisted Parent "numerous times reading and understanding written documents for special education matters via telephone" since February 2007. She estimates that she has reviewed and explained to Parent over fifty documents regarding special education matters. (P-31)
12. Parent has been a registered borrower of the Perkins Braille & Talking Book Library since March 1992. She is eligible to use the library's "specialized services for people who cannot read regular print due to a visual, physical or reading disability." (P-32)
13. The record contains approximately 70 e-mail communications exchanged between Parent and school staff and Parent and school counsel between June 12, 2012 and January 2, 2013. The e-mails consist of questions posed by Parent to various school personnel and school counsel and Parent's sharing of information regarding Student. Some of Parent's e-mails are lengthy, consisting of 16-30 lines of text. Several of Parent's e-mails contain detailed information and at least one contains citation to and demonstrates understanding of legal regulations. (S-1)

FINDINGS AND CONCLUSIONS:

This is an unusual decision as it does not address any issues concerning Student's needs or Student's educational program. Instead, the entire focus of this matter stems from a dispute between Parent and the district regarding whether Parent is a qualified individual with a disability under Section 504 of the Rehabilitation Act 29 U.S.C. § 794, or the Americans with Disability Act, 42 U.S.C. § 1211 et seq. The BSEA does not have jurisdiction to address that question with respect to Parent. However, it does have jurisdiction to determine whether Triton provided Parent with prior written notice with respect to her request that Student be provided with a laptop computer and an FM system

better recognize those words when she reads them independently. A final excerpt states it "may be helpful for [Parent] to have some of her textbooks transcribed onto tape by the "Books on Tape" service." (P-29)

when it sent her a written N1 form despite Parent's previous requests that all communication be sent to her in audio format.

The IDEA regulation pertaining to the district's provision of prior written notice to a parent is found at 34 CFR § 300.503. The portion of the regulation relevant to the matter before me describes the requirement that the notice be provided in understandable language. Subsection (c) of 300.503 provides

- (1) The notice required under paragraph (a) of this section must be—
 - (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—
 - (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

There is no dispute that the notice was provided in language understandable to the general public. Thus, in order for Parent to prevail on her claim that Triton did not provide her with appropriate prior written notice when it provided her with a written N1 form, she must show that her "native language or other mode of communication is not a written language."

Throughout this proceeding, Parent has corresponded with the hearing officer, the school district, and its counsel via written letters and e-mails. Some of the e-mails have been quite lengthy and complex. Parent's letters and e-mails have all been quite comprehensible and have been responsive to inquiries of the district and directives of the hearing officer. There has never been any indication that Parent has been unable to understand the content of hearing officer orders.⁴ Parent successfully corresponded via written e-mail with the district and its counsel at least 70 times.

While Parent may be a person with a disability, she has not provided any credible evidence that she does not or is unable to utilize written language, and thus has failed to meet her burden. Instead she relied on her own affidavit which provides non-specific information about accommodations which were provided to her by a college over twenty years ago, and quotations purportedly cited from a report of an unidentified neuropsychologist written over twenty years ago. She states that she has a reading

⁴ As a courtesy to Parent, the undersigned hearing officer instructed her assistant to contact Parent every time a written order was issued and ask the Parent if she wanted the order read to her. Sometimes the Parent called back and requested that the order be read to her answering machine and sometimes she did not return the assistant's phone call. When lengthy orders or rulings were issued, the undersigned hearing officer read the order or ruling into a cassette tape and sent it to the Parent. However, this was done as a courtesy to a Parent who had identified herself as a person with a disability and does not impact on the district's obligation to provide the same.

disability and has been permitted accommodations by various public entities, but does not provide any proof that her mode of communication is not a written language. The affidavits provided by Ms. King and Ms. Beebe also do not prove that Parent's mode of communication is not a written language. They simply indicate that during the course of six or seven years they have assisted Parent with reviewing documents pertaining to special education matters. The letter from the Perkins Library Director is equally irrelevant to the issue before me because it simply states that Parent is a registered borrower at the library and states an opinion regarding Parent's request for audio versions of documents pertaining to Student's IEP. There is no way to assess the credibility of her opinion, as she did not testify. Her letter does not indicate that she has any personal knowledge of Parent's ability to utilize written language or that she knows anything about Parent other than the fact that she is a registered borrower of the library.

The purpose of 34 CFR § 300.503 is to ensure that a parent is aware when a district is proposing to change a portion of a student's educational program or in this case, that the district has denied a specific accommodation requested by the Parent. There is no question that Parent understood that Triton had refused her request to provide Student with a laptop and an FM system. Parent's understanding of this is evident by her including the lack of prior written notice regarding these refusals as an issue in her original request for hearing. In order to resolve this matter, Triton sent Parent an N1 form in November 2012. Parent has not demonstrated that she is unable to read and understand the content of the written notice sent to her by the district.

Parent has not met her burden of proving that her native language or other mode of communication is not a written language. Therefore, Triton has provided Parent with prior written notice of its decision not to provide Student with a laptop computer or an FM system by providing Parent with a written N1 form.

I make no findings with respect Parent's request to Triton for accommodations of her disability or its response as these issues are beyond the jurisdiction of the Bureau of Special Education Appeals.

By the Hearing Officer,

Catherine M. Putney-Yaceshyn
Dated: March 6, 2013