

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

In re: Quin¹

BSEA #1605247

RULING ON MOTION TO REOPEN EVIDENCE

This matter comes before the Hearing Officer on the Motion of the Parent to Reopen Evidence (“Motion to Reopen”) to allow Parent to submit her phone records from November 19- November 21, 2015. The Motion to Reopen was filed by Parent on June 9, 2016 in response to a change in the testimony of a key witness, discovered at Hearing² on June 8, 2016. Framingham Public Schools (Framingham or “District”) filed its Opposition to the Parent’s Motion to Reopen on June 16, 2016. Neither party has requested a hearing on the Motion, and as testimony or oral argument would not advance my understanding of the issues involved, this Ruling is being issued without a hearing pursuant to *Bureau of Special Education Appeals Hearing Rule VII(D)*. The procedural history of this matter is complex, so it is recounted here only to the extent it is relevant for purposes of deciding this motion.

Following the allowance of partial Summary Judgment for Parent,³ the only issue for Hearing was whether, in the context of the ongoing relationship between the parties, the conversation between Parent and Framingham Public Schools Team Evaluation Chair, Nancy Shor, that took place on November 17, 2015, together with the tutoring form the District generated and Parent signed on November 23, 2015, constituted an “agreement otherwise” allowing for an interim change in placement pending the resolution of a dispute over Quin’s placement and services. Prior to the Hearing, Ms. Shor testified by way of affidavit⁴ that she had suggested home-tutoring for Quin during a phone call that occurred on November 17, 2015. Parent submitted her phone records from November 17, 2015 as evidence to support her claim that the phone call did in fact occur on that date, and that the conversation lasted between one and two minutes. Her phone records in fact show two incoming calls that originated from a phone number that purports to be Ms. Shor’s at McCarthy Elementary School, each lasting one minute. (P-16) At Hearing on June 8, 2016, Ms. Shor testified that this conversation actually took place on November 20, 2015, and not on November 17, 2015. At Hearing, Parent testified that while she and Ms. Shor had multiple phone conversations over the course of several days, none of them lasted longer than a few minutes. The District did not contest this testimony. Additionally, Parent and Ms. Shor testified that Ms. Shor proposed Quin’s change in placement

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

² A Hearing was held on June 8, 2016 on the issue of whether, in the context of the Parties’ ongoing relationship, a phone conversation between Parent and Framingham Team Evaluation Chair Nancy Shor, together with the tutoring form the District generated and Parent signed on November 23, 2015, constituted an “agreement otherwise” allowing for an interim change in placement pending the resolution of a dispute over Quin’s placement and services.

³ Parent filed her Motion for Summary Judgment on March 22, 2016. The District filed a Cross-Motion for Summary Judgment on April 29, 2016.

⁴ Ms. Shor’s affidavit containing this statement was submitted by the District on April 28, 2016.

only during the course of the one phone call, which they now agree likely occurred on November 20, 2015.

After Hearing, Parent filed her Motion to Reopen evidence so she could submit her phone records from November 19 to November 21, 2015 into evidence, in order to support her contention that the conversation at issue was between one and two minutes long. In its Opposition, the District argued that the proffered exhibit is of little probative value, as it fails to identify the maker of any phone calls, and due to redaction it fails to demonstrate that no additional calls were made during this time period from Ms. Shor to Parent. For the reasons set forth below, Parent's Motion to Reopen evidence to allow submission of Parent's phone records from November 19 to November 21, 2015 is hereby DENIED.

DISCUSSION

A. Legal Standard for Ruling on Motion to Reopen

Pursuant to Massachusetts regulations, “[a]t any time after the close of a hearing and prior to a decision being rendered, a [p]arty may move to reopen the record if there is new evidence to be introduced.”⁵ “As a general proposition, the granting of a motion to permit additional evidence to be introduced after the record has been closed rests in the discretion” of the fact-finder.⁶

When determining whether to reopen the evidentiary record, a Hearing Officer must consider a strong policy preference for predictability and finality of proceedings. As the First Circuit has recognized, “[t]he state has a strong interest in maintaining a stable trial format with a definite end as well as a beginning.”⁷ Even in the context of criminal law, which involves potential sixth amendment violations, a moving party must show that the “proffered evidence is of such importance to the achievement of a just result that the need for admitting it overrides the presumption favoring enforcement of the state's usual trial procedures.”⁸ Evidence is considered to be of such importance if its admission to the record would compel a different result.⁹ Therefore, a Hearing Officer may deny a motion to reopen the record for evidence if it appears that such evidence would not alter the outcome of the case.¹⁰

⁵ 801 CMR 1.01(7)(k). The regulation defines new evidence as “newly discovered evidence which by due diligence could not have been discovered at the time of the hearing by the Party seeking to offer it.” See *Id.*

⁶ *Kerr v. Palmieri*, 325 Mass. 554, 557 (1950); see *Blaikie v. Callahan*, 691 F.2d 64, 65, 68 (1st Cir. 1982) (it is “within the sound discretion of the judge to admit material evidence offered by a party after he has rested”).

⁷ *Blaikie*, 691 F.2d at 65.

⁸ *Id.* at 68.

⁹ 29 CFR § 102.48(d)(1) (“In a motion to reopen the record, a party must state briefly the additional evidence sought to be adduced; explain why it was not presented previously; and state that, if adduced and credited, it would require a different result.”)

¹⁰ See *N.L.R.B. v. Challenge-Cook Bros. of Ohio, Inc.*, 843 F.2d 230, 232 (6th Cir. 1988) (affirming board's refusal to reopen the record and receive further evidence, as it appeared that such evidence would not have changed the result of the case).

B. Application of Legal Standard

Here, Parent moves to reopen the record to submit her phone records into evidence to substantiate her claim that the conversation in which Ms. Shor proposed Quin's change of placement from full inclusion to home tutoring, occurred over the course of a phone call lasting between one and two minutes. Because Ms. Shor had originally testified by way of affidavit¹¹ that she had suggested home-tutoring for Quin during a phone call that occurred on November 17, 2015, Parent had submitted her phone records for this date as evidence supporting her contention that the phone call was only one to two minutes in length.

Parent's failure to submit her phone records from November 19 to November 21, 2015 in advance of the Hearing was reasonable, as at that point the parties appeared to agree that the phone call during which Ms. Shor proposed home tutoring occurred on November 17, 2016. Ms. Shor did not correct her statement about the timing of the phone call until her testimony at Hearing on June 8, 2016. However, Parent testified at Hearing that the conversation in question, regardless of the date it occurred, consisted of Ms. Shor proposing a change in placement over the course of a phone call lasting one to two minutes. No one who testified for the District, including Ms. Shor, contested the length of the phone call, nor did anyone assert that Ms. Shor proposed the change in placement at any other point in time.

The issue before me at Hearing was whether the District changed Quin's placement without obtaining Parent's actual, informed consent. Although the length of the conversation in which District proposed the change in placement is relevant, the Parties do not dispute that the conversation lasted one to two minutes, nor do they dispute that several additional phone calls occurred between Ms. Shor and Parent around the same time. Therefore, the submission of Parent's phone records would not influence the outcome, because these particular factual allegations have already been confirmed by the Parties at Hearing.

CONCLUSION

Upon considering Parent's Motion to Reopen Evidence and the District's Opposition thereto, I conclude that no evidence in the record contradicts the assertion Parent intends to substantiate through the submission of new evidence. As such, I find that to the extent the length of the conversation that occurred on November 20, 2015 is relevant to my ultimate decision, reopening the evidence would not alter the outcome of this case.

ORDER

Parent's Motions to Reopen the Evidence is hereby DENIED. The decision in this matter will be based upon the evidence submitted in advance of the Hearing, as well as the arguments and testimony that occurred on June 8, 2016.

¹¹ Ms. Shor's affidavit containing this statement was submitted by the District on April 28, 2016.

By the Hearing Officer:

Amy M. Reichbach
Dated: July 8, 2016