# **COMMONWEALTH OF MASSACHUSETTS**

**Division of Administrative Law Appeals**

**Bureau of Special Education Appeals**

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In Re: Student )

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& ) BSEA # 2107071

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Lawrence Public Schools )

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### RULING DISMISSING MATTER FOR FAILURE TO PROSECUTE

On April 28, 2021, Parent attended the Hearing in this matter but refused to proceed with the presentation of her case. She indicated that she desired legal representation and did not wish to proceed in front of the BSEA; she asked repeatedly for the matter to be transferred to a court for the matter to be heard before a judge.

Prior to the Hearing, Parent repeatedly failed to respond to motions of opposing parties or to the Orders and Rulings issued by the Hearing Officer. Parent also did not participate in the pre-hearing conference on April 16, 2021.

The above-referenced matter is therefore **Dismissed Without Prejudice.**

**FACTS:**

1. During a conference call on March 18, 2021, Parent indicated that she wished to retain an attorney. When asked whether she wished to postpone the Hearing date in order to do so, Parent indicated that she did not wish to postpone the Hearing date nor did she plan to proceed to Hearing without legal representation. Thereafter, Parent refused to participate in any more conference calls.
2. On April 6, 2021, the District requested a postponement of the automatic Hearing date which was scheduled for April 28, 2021. Parent did not respond.
3. On April 6, 2021 and again on April 8, 2021, Parent emailed the Hearing Officer indicating that she wanted the matter transferred to a court.
4. In an Order issued on April 2, 2021 and in a Revised Order issued on April 8, 2021, the Hearing Officer scheduled a Pre-Hearing Conference intended, in part, to clarify the issues for Hearing and to discuss scheduling matters, including whether Parent wished to postpone the Hearing date since she had yet to secure counsel. Parent did not attend the Pre-hearing Conference.
5. On April 23, 2021, Parent again wrote to the Hearing Officer requesting that the matter be transferred to a court.
6. On April 28, 2021, Parent, through an interpreter, indicated that she did not wish to present her case without an attorney. However, when encouraged and invited by the Hearing Officer to ask for a postponement in order to secure counsel, Parent refused.
7. Parent stated that she would not proceed in front of the BSEA. She wished the matter to be transferred to a court and to be heard in front of a judge.
8. The Hearing Officer asserted that she has no authority to transfer the matter to be heard in front of a judge.
9. At Hearing, the District made an oral Motion to Dismiss the matter without prejudice.
10. Parent refused to present her case.
11. The Hearing Officer allowed the Motion of the Lawrence Public Schools and Dismissed the matter Without Prejudice for Failure to Prosecute.

**LEGAL STANDARD:**

1. *Exhaustion*

A party seeking judicial relief under the IDEA must first “exhaust” or complete all the administrative due process procedures set out in the statute before seeking relief in court.[[1]](#footnote-2) The IDEA's exhaustion requirement ensures that the BSEA is able to develop a factual record and apply its "specialized knowledge" in an IDEA-based claim.[[2]](#footnote-3)

1. *Failure to Prosecute or Defend*

According to BSEA Hearing Rule IX(F), “If a party fails to file documents required by statute or regulation, to respond to notices or correspondence, to comply with orders of the Hearing Officer, to appear at the scheduled hearing or otherwise indicates an intention not to continue with prosecution of the claim, the Hearing Officer may dismiss the case with or without prejudice through a ten (10) day Order to Show Cause, or may take evidence and issue such orders as may be necessary including, but not limited to, ordering an educational program or placement for the student.” In addition, pursuant to 801 Mass. Reg. 1.01(7)(g)(2),

When the record discloses the failure of a Party to file documents required by statute or by 801 CMR 1.00, to respond to notices or correspondence, to comply with orders of the Presiding Officer, or otherwise indicates an intention not to continue with the prosecution of a claim, the Presiding Officer may initiate or a Party may move for an order requiring the Party to show cause why the claim shall not be dismissed for lack of prosecution. If a Party fails to respond to such order within ten days, or a Party's response fails to establish such cause, the Presiding Officer may dismiss the claim with or without prejudice.

Although the BSEA is not bound by the Federal Rules of Civil Procedure, we often examine them for guidance. Pursuant to the Federal Rules of Civil Procedure, “If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.”[[3]](#footnote-4)

**APPLICATION OF LEGAL STANDARD:**

In accordance with the Notice issued on March 26, 2021, the BSEA has afforded Parent the opportunity to present her case-in-chief on April 28, 2021. On April 28, 2021, Parent reiterated several times that she did not wish to present her case in front of the Hearing Officer and requested that the matter should be transferred to a court to be heard in front of a judge. This was not within the Hearing Officer’s authority in light of the exhaustion requirement discussed *supra*..[[4]](#footnote-5) At that time, the Lawrence Public Schools made an oral motion to dismiss the matter for failure to prosecute.[[5]](#footnote-6) Because the Hearing Officer could not accommodate Parent’s request to transfer the matter[[6]](#footnote-7) and Parent refused to proceed or to seek a postponement of the matter in order to secure counsel, the Hearing Officer ruled that the matter be dismissed without prejudice.

**ORDER**:

As Parent refused to prosecute her case on the date of the Hearing, the above-referenced matter is hereby **DISMISSED WITHOUT PREJUDICE**.

By the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir

Date: May 3, 2021

1. 20 U.S.C. 1415 (l); 34 CFR 300.516(e). [↑](#footnote-ref-2)
2. *See* *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 59, 64 (1st Cir. 2002). [↑](#footnote-ref-3)
3. Fed. R. Civ. P. 41(b). [↑](#footnote-ref-4)
4. 20 U.S.C. 1415 (l); 34 CFR 300.516(e). [↑](#footnote-ref-5)
5. *BSEA Hearing Rule* IX(F). [↑](#footnote-ref-6)
6. 20 U.S.C. 1415 (l); 34 CFR 300.516(e). [↑](#footnote-ref-7)