**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Springfield Public Schools BSEA # 2208440**

**RULING ON PARENT’S ORAL MOTION FOR PARAPROFESSIONAL DURING PENDENCY OF DISPUTE**

This matter comes before the Hearing Officer on *Parent’s Oral* *Motion for Paraprofessional During Pendency of Dispute* (hereinafter, *Motion*). Specifically, during a conference call on November 4, 2022, Parent requested that Springfield Public Schools (the District or Springfield) be ordered to provide Student with a paraprofessional during the pendency of the instant appeal. Parent asserts that, without paraprofessional support, neither Student nor his peers are safe in school.

The District objected to the request, asserting that Student is attending his stay-put placement in full inclusion and that the District has proposed both an extended evaluation at a more restrictive location and placement in a more restrictive setting, but Parent has rejected both proposals. Moreover, according to Springfield, no expert has recommended that Student requires paraprofessional support, and Springfield disputes the efficacy of such intervention for Student.

The parties were offered the opportunity to supplement oral arguments with written submissions, but both parties declined.

For the reasons set forth below, Parent’s *Motion* is hereby DENIED.

**PROCEDURAL HISTORY AND RELEVANT FACTS:**

1. Student is a 6th grade student in the Springfield Public Schools.
2. On April 20, 2022, Student was involved in sexual misconduct for which he was suspended.
3. On April 26, 2022, Parent filed a Request for Hearing seeking an Order to remove Student’s suspension from his record as well as an “Order for compensatory services”; an Order that the District “violated parent's rights by moving forward with IEP meeting without parent”; an Order that the District “failed to update and implement students[sic] IEP”; and an Order “for a [p]lacement in a different school.”
4. On September 16, 2022, Parent filed an Amended Hearing Request adding the following issues for hearing:

“1. Whether the school district [denied Student a FAPE when it] failed to report and conduct a [T]itle IX complaint when [Student] reported being touched sexually by a student…[;]

2. Whether [the] District denied [a] FAPE to [Student] after sending him to a 45-]day placement at Center [S]chool for observations then came to the meeting denied [C]enter [S]chool[‘s] recommendations including placement, learning disability SLD form, Executive functioning goal, and self-regulation goals[;]

3. Whether [the Director of Special Education for the Springfield Public Schools] denied [Student a] FAPE by making unilateral placement decisions in the IEP meeting[;]

4. Whether [the] conduct [of [the Director of Special Education for the Springfield Public Schools] in the IEP meeting was retaliatory and denied student [a] FAPE because [of Student’s] advocate[;]

5. Whether the IEP was unilaterally written denying parent rights under IDEA and the 14th [E]qual [P]rotection [A]ct [sic] of the Constitution[;]

6. Whether the District denied [S]tudent [a] FAPE though [sic] undue influence by saying [Student] could only have transportation if she agreed to the unilaterally offered placement that is not appropriate[; and]

7. Whether the District owe[s] [Student] compensatory services.” [[1]](#footnote-1)

1. During a conference call on September 26, 2022, Parent indicated that Student has “revealed new information” and now requires another extended evaluation at a therapeutic setting in order to conduct a “clinical psychological evaluation.” Via letter dated same, the District agreed to “accommodate an extended evaluation at SEBS during which time one of its clinicians would be able to complete a clinical evaluation of [Student].” On or about September 28, 2022, the District informed Parent that the extended evaluation could begin at the SEBS program and provided Parent with an Extended Evaluation Form dated 10/03/2022 to 12/06/2022. Parent has yet to respond formally to the Extended Evaluation Form but is currently seeking a virtual observation of the SEBS program.
2. Student’s stay-put placement is a full inclusion program.
3. For the majority of the 2022-2023 school year Student has not attended school. When he attends, Student struggles with attention, sexualized behavior, and inappropriate verbalizations.
4. During a meeting on October 20, 2022, Parent requested that Student be provided with a paraprofessional. The District rejected the request.
5. On October 31, 2022, Student returned to school following a long absence. Due to inappropriate verbalization, he received a one day in-school suspension.
6. The Hearing in this matter has been postponed for good cause multiple times and is scheduled to begin on November 22, 2022.

**LEGAL STANDARDS:**

Interim orders for additional services are rare at the BSEA, because “there is a risk of prejudice to the non-moving party if such an order is entered prior to a full hearing on the merits, [and, ] in most cases, both prospective and compensatory services are appropriate remedies for any past denials of FAPE to a student who prevails on the merits.”[[2]](#footnote-2) In *In Re: Quincy Public Schools (Ruling on Motion for Interim Services),* BSEA #03-4007 (2003), the Hearing Officer granted an interim order but indicated that she “reach[ed[ the conclusion that interim services [were] warranted, [because the] this case involve[d] a highly unusual set of circumstances that are unlikely to recur frequently.” In that case, during the pendency of the dispute, Student began undergoing an experimental steroid treatment for a short and finite period of time, and Parents sought an interim order requiring the school district to provide Applied Behavior Analysis (ABA) and speech and language services for the duration of the treatment, arguing that by the time a decision on the merits was issued, the treatment would have ended. Following a hearing on the motion, which included the presentation of testimony and evidence, the Hearing Officer found that “Parents [had] shown, by a preponderance of evidence, that Student [would] be irreparably harmed unless he receive[d] a significant amount of one-to-one behavioral [and speech and language] therapy” because “any window of opportunity for language acquisition that [might] be ope[n] by steroid treatment necessarily [would] be closed when the treatment end[ed], and any harm from denial of ABA services during that period [would] not likely be remedied by prospective or compensatory relief if the Student prevail[ed] on the merits.” She ordered that “[s]uch therapy should continue until Student finishes steroid treatment or until a full decision on the merits, whichever is earlier.”[[3]](#footnote-3)

**APPLICATION OF LEGAL STANDARDS**:

It is undisputed that Student is currently attending his stay put placement in the full inclusion classroom within the Springfield Public Schools pursuant to his last accepted IEP.[[4]](#footnote-4) However, Parent seeks an interim order requiring Springfield to provide Student with paraprofessional services during the pendency of the instant appeal.

Here, in contrast to *In Re: Quincy Public Schools (Ruling on Motion for Interim Services),* BSEA #03-4007 (2003), Parent has presented no evidence to demonstrate that Student will suffer irreparable harm in the absence of a paraprofessional,[[5]](#footnote-5) and Student’s one-day in-school suspension does not rise to such level of harm. Nor has Parent demonstrated by a preponderance of the evidence (or through any expert evidence at all) that the use of a paraprofessional as an intervention would allow Student to access his full inclusion classroom and prevent future school discipline.

The Hearing in this case is scheduled to begin in approximately three weeks. Until such time as the decision in this matter is rendered, unless the parties agree otherwise, Student's stay put is his full inclusion program with the supports and services delineated in his IEP. Should Student's behavior pose a health or safety risk to himself or others during the pendency of the proceedings, Parent may, pursuant to BSEA Hearing Rules II (G) and II(D), amend her Request for Hearing and seek accelerated relief.

**ORDER**:

Parent’s *Motion* is DENIED.

So ordered,

By the Hearing Officer,

s/ *Alina Kantor Nir*
Alina Kantor Nir

Date: November 4, 2022

1. On September 20, 2022, in her *Ruling on Springfield Public Schools’ Motion to Dismiss*, the undersigned Hearing Officer dismissed Parent’s 14th Amendment and retaliation claims but ruled that Parent’s claim that the District’s failure to conduct a Title IX investigation resulted in a denial of a FAPE survives dismissal. [↑](#footnote-ref-1)
2. In Re: Quincy Public Schools (Ruling on Motion for Interim Services), BSEA #03-4007 (2003). [↑](#footnote-ref-2)
3. *In Re: Quincy Public Schools (Ruling on Motion for Interim Services),* BSEA #03-4007 (2003). [↑](#footnote-ref-3)
4. See 20 USC §1415(j) and 603 CMR 28.08(7). [↑](#footnote-ref-4)
5. See also *In Re: Andrew S. and the Greenfield Public Schools (Decision on Motion),* BSEA #94-1451 (Byrne, 1995) (denying Parents' Motion for an Interim Order for a diagnostic placement as there was “no evidence that emergency circumstances warrant [ed] a change of placement at [that] time[, and a] change of the student's placement absent full consideration of all the evidence introduced at the hearing could be viewed as an attempt to circumvent the hearing process”). [↑](#footnote-ref-5)