**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 MOTION TO INCLUDE DISTRICT DENYING PARENT RIGHT TO HAVING INTERPRETER, AND TRANSLATED DOCUMENTS**

This matter comes before the Hearing Officer on Parent’s November 18, 2022 *Motion to Include District Denying Parent Right to Having Interpreter, and Translated Documents* in which Parent seeks to “add to the Hearing Issues [sic] [that the Springfield Public Schools’] failure to provide interpreter, and translated documents to parent denied [Student] FAPE and denied parent meaningful participation.” Parent asserts that “[t]his is per se violation that can not be ignored because parent can not legally consent to a document she can not read.”

In response, the Springfield Public Schools (Springfield or the District) filed Springfield Public Schools' Motion in Opposition to Parent's Motion to Include District Denying Parent Right to Having Interpreter, and Translated Documents asserting that

“[i]t is patently unfair and irrevocably prejudicial to the District to add another issue to this case with such short notice, especially where the Parent has had months to do so and instead waits until the very last moment. Even assuming in some incomprehensible way that the advocate was not aware of her client's language needs prior to November 4 (thus calling into question many concerns), she brought this to light on November 4 and, at the very least, should have amended her hearing request at the time. She did not do so.”

Because a hearing would not advance the Hearing Officer’s understanding of the issues, this Ruling is issued without a hearing in accordance with BSEA Hearing Rule VII(D).[[1]](#footnote-1) For the reasons articulated below, Parent’s *Motion* is DENIED.

**RELEVANT FACTS AND PROCEDURAL HISTORY[[2]](#footnote-2):**

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.” 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 45day 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.”

Parent sought 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”; an Order for a placement at Center School; an Order that “the most current proposed IEP was unilaterally written”; and an Order that “the District’s retaliation denied student FAPE and Parent [sic].” The BSEA issued a Recalculated Notice of Hearing, and the matter was postponed for good cause several times.

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 survived dismissal.

On October 27, 2022, the District requested “an order clarifying the issues for hearing.” Also, on October 27, the Hearing Officer forwarded to the parties the following “draft” issues for Hearing, asking Parent to “fill in the blanks” with the relevant dates as they were not apparent from the pleadings:

“1. Whether the District conducted an IEP meeting without Parent in attendance on ----?

a. If the answer to (1) is yes, did the District deny Parent meaningful participation in the IEP process?

1. If the answer to (1)(a) is yes, what is the appropriate remedy?

2. Whether the District failed to implement Student’s IEP dated from ---- to ---- for the period ----”?

a. If the answer to (2) is yes, did the District deny Student a FAPE?

1. If the answer to (2)(a) is yes, what is the appropriate remedy?

3. Whether Springfield fail to conduct a Title IX investigation relative to an incident which took place on ----?

a. If the answer to (3) is yes, did the District deny Student a FAPE?

1. If the answer to (3)(a) is yes, what is the appropriate remedy?

4. Whether Springfield ignored the recommendations of the Center School when drafting the IEP dated from ---- to ----?

a. If the answer to (4) is yes, did the District deny Parent meaningful participation in the IEP process?

1. If the answer to (4)(a) is yes, what is the appropriate remedy?

5. Whether Springfield made a unilateral placement during the IEP meeting on -----?

a. If the answer to (5) is yes, did the District deny Parent meaningful participation in the IEP process?

1. If the answer to (5)(a) is yes, what is the appropriate remedy?

6. Whether on ---- the District offered Student transportation under the condition that Parent accept the placement proposed in the IEP dated from ---- to ----?

a. If the answer to (6) is yes, did the District deny Parent meaningful participation in the IEP process?

1. If the answer to (6)(a) is yes, what is the appropriate remedy?

7. Whether the IEP proposed for the period from ---- to ---- and/or the IEP proposed for the period ----- to ---- were/are reasonably calculated to offer Student a FAPE in the LRE?

1. If the answer to (7) is no, what is the appropriate remedy?”

On October 28, 2022, the parties participated in a conference call. An Order issued the same date instructed Advocate “to provide the Hearing Officer with the relevant dates for the issues for hearing.” The parties were also instructed to submit their objections to the issues drafted by the Hearing Officer. On November 2, 2022, Springfield filed two objections to the issues for Hearing. Advocate responded with a request for a conference call, asserting that the District was denying her a virtual observation of the program. The Hearing Officer responded that formal motions must be made, and no rulings will be issued based on email communications. On November 3, 2022, the Hearing officer emailed the parties the issues for Hearing, incorporating the input submitted by Advocate in accordance with the October 28, 2022 Order.

The parties participated in a Zoom call on November 4, 2022. During the call, Advocate informed the Hearing Officer that Parent’s native language is Spanish and that the District has not been providing her with translation and interpretation services. During the call, the Hearing Officer informed Advocate that this issue was not before her in the pending hearing Request; that she was welcome to submit a Request to Amend the Hearing Request; that the Hearing Officer needed to know whether to translate rulings and orders moving forward; and that she had to inform the Hearing Officer as to whether Parent required an interpreter for the Hearing, since, a past motion hearing was held in the absence of an interpreter, as the BSEA had no prior notice that an interpreter was required. In the Second Order issued on same date, pursuant to the parties’ discussion, the Hearing Officer noted the changes that were made to some of the issues delineated in the November 3, 2022 email, and again requested that Advocate inform the Hearing Officer whether Parent requires a Spanish interpreter or Spanish translations of documents.

On November 10, 2022, Advocate emailed the parties as follows:

“Sorry it is so late however I thought this should be sent to show (I) yes parent needs a translator and (ii) the district”t[sic] has been aware of the language barrier for years. There is additional emails with frustration about having things translated, would you like that as well. This is very concerning.”

Attached to Advocate’s email was an email communication strand.

On November 11, 2022, Advocate emailed with a statement from Parent:

“I am quiet in the meetings because it is difficult to express myself, because they don't have an interpreter. I cannot express how I feel I when they [sic] my son's rights and my rights to [sic]. I always say i[sic] will try my best because English is not my language. In hearing I understand better but speaking and reading is very hard, and I only understand my advocate because she explains everything slowly after the meeting, but I always leave confused.”

In response, Counsel for the District wrote:

“I am very concerned that this issue was just being raised now, practically on the eve of hearing after we have had so many meetings when this has not been raised, including an open public motion hearing where the parent was asked if she understood the important rights she was waiving.

The district has documentation where the parent checked off that she did not need an interpreter.”

Also on November 11, Advocate filed a Motion to Postpone, asserting she “certainly had

no knowledge that the documents were not being translated and provided to parent in native language because a translated document would simply not come to me only to [Parent].” Advocate then emailed the Hearing Officer with two additional documents “confirming [Parent] needs translated documents.”

On November 14, 2022, the Hearing Officer issued *Ruling on Motion to Postpone and* *Parent’s Motion to Postpone So Discovery Can Be Translated [Into] Parent’s Native Language*, denying Parent’s motions and stating, in part,

 “it is concerning to the Hearing Officer that despite many frequent communications between the parties and the Hearing Officer, the BSEA has only now been informed of the Parent's language needs, seven months following the initial filing of the Request for Hearing ... [a]s presumably the Advocate has been aware of the Parent's language needs for the duration of the instant appeal (and has been guiding her client with the appropriate language­based accommodation in mind).

… Nor can I find “good cause” in Parent’s request to postpone the Hearing to allow for the translation of discovery documents into Spanish; in the past several months, Parent has filed several motions relative to discovery, and not once has the issue of translation been raised. As in *In re Donna*, Parent’s Advocate has been ‘able to adequately communicate’ with her client and has “presumably already described to [her client] the discovery” in question. Parent’s Advocate cannot, one week prior to Hearing, raise an issue, that should have been apparent to Advocate upon filing the instant appeal, and expect a postponement thereof.”[[3]](#footnote-3)

On November 17, 2022, Counsel submitted an “email as S-66 for purposes of translation issue” indicating that she “will send a hard copy of this additional exhibit”. On November 18, 2022, Advocate wrote, “I am sending over an objection to the district's exhibit 66 because the district had no extension for exhibits only Parent did because of the hardship created by district.”

On November 18, 2022, the Hearing Officer wrote to the parties,

“In light of the last exhibit submitted by the District for consideration, am I to understand that the parties will litigate the issue of whether failure to provide interpretation and translation services denied parent meaningful participation?  Parent has yet to request to amend the HR to include this issue.”

Counsel for Springfield responded, “No that is not my understanding at all.” Advocate responded, “Yes, I think it is necessary to add this to the hearing Issue. I will send the request today.” In response, District’s Counsel wrote, “We cannot agree to adding an issue to the hearing less than 2 business days before the hearing begins.”

At 12:12PM on November 18, 2022, Parent submitted the instant *Motion* via email, indicating she would follow up with a fax to the BSEA.

The Hearing in this matter is scheduled to begin on November 22, 2022.

**LEGAL STANDARDS:**

The IDEA requires the party initiating a due process hearing to file a complaint and provide notice of this complaint to the other party and the state educational agency. In part, the complaint must include a description of issue(s), including facts relating to such issue(s) and a proposed resolution to the dispute, to the extent known and available to the party at the time.[[4]](#footnote-4) This provides the opposing party with notice as to the issues for hearing.

BSEA Hearing Rule I(G) allows the moving party to amend the Hearing Request under two circumstances:

“1. In response to a Hearing Officer’s determination that a hearing request is insufficient, as described in E, above, the moving party may file an amended hearing request within fourteen (14) calendar days of the date of the Hearing Officer’s determination.

2. If the other party consents in writing, or the Hearing Officer grants permission. (The Hearing Officer may not grant such permission later than five (5) calendar days before the start of the hearing.)”

801 CMR 1.01(6)(f) further instructs that the “Presiding Officer may allow the amendment of any pleading previously filed by a Party upon conditions just to all Parties, and may order any Party to file an Answer or other pleading, or to reply to any pleading.” Because neither BSEA Hearing Rule I(G) nor 801 CMR 1.01 defines “conditions just to all Parties,” I turn to the Federal Rules of Civil Procedure for guidance.

Rule 15 of the Federal Rules of Civil Procedure provides that “a party may amend its pleading [with] the court’s leave” and that “[t]he court should freely give leave when justice so requires.”[[5]](#footnote-5) Thus, the court has the discretion to grant or deny a request for leave to file an amended pleading, and “leave to amend must generally be granted unless equitable considerations render it otherwise unjust.”[[6]](#footnote-6)  Amendments “may be denied on the basis of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.”[[7]](#footnote-7) In determining whether to grant a motion to amend, the Court must examine the totality of the circumstances and “exercise its informed discretion in constructing a balance of pertinent considerations.”[[8]](#footnote-8)

BSEA Hearing Rule I(G) further states that whenever a Hearing Request is amended, new timelines for the entire process are thereafter calculated, as if the amended hearing request were a new request. The Rule also identifies that to the extent the amendment merely clarifies issues raised in the initial hearing request, the date of the initial hearing request shall be controlling for statute of limitations purposes. For issues not included in the original hearing request, however, the date of the amended hearing request shall be controlling for statute of limitations purposes.[[9]](#footnote-9)

**APPLICATION OF LEGAL STANDARDS:**

I note at the outset that BSEA Hearing Rule I(G) grants me the authority to deny Parent’s request since the Hearing is scheduled to begin in fewer than 2 business days, on November 22, 2022; specifically, Hearing Rule I(G)(2) states, the “Hearing Officer may not grant [] permission [to amend the Hearing Request] later than five (5) calendar days before the start of the hearing.”

Moreover, I find that “equitable considerations render [an amendment at this time] unjust.”[[10]](#footnote-10) Specifically, Parent was invited by the Hearing Officer, on November 4, 2022, to amend her Hearing Request to include the issue of whether Parent required and was denied translation and/or interpretation services by Springfield, but, in spite of multiple communications between the parties regarding the issues delineated for Hearing, Parent failed do so until 12:12 PM on Friday, November 18, 2022.

Parent relies on Hearing Officer Amy Reichbach’s Order in *In re: Ollie v. Springfield Public Schools,* BSEA**#**2007894, in which Hearing Officer Reichbach “allowed an issue raised during the final days of the Hearing regarding the credentials of one of Ollie’s teachers" to be litigated after directing the parent to submit any evidence in support of her allegations regarding the lack of an effective waiver by close of business, and instructing the District to file its response after sufficient time.[[11]](#footnote-11)

This matter, however, is distinguishable from *Ollie*. First, in *In re: Ollie, supra,*, Parent proceeded *pro se*. Here, Parent is represented by a seasoned advocate. Moreover, an issue concerning one teacher’s credentials is a very limited, discrete factual matter which would not require substantial preparation on the part of the District. Here, the issue of whether Parent requires translation and interpretation services, whether the District had notice of such need, and whether any such services were offered or provided during the relevant timeframe is a far broader one, and much more difficult to fully address without sufficient time to prepare.

**ORDER:**

Parent’s *Motion* is DENIED.

So ordered,

By the Hearing Officer,

s/ *Alina Kantor Nir*
Alina Kantor Nir

Date: November 18, 2022

1. See 801 Mass. Reg. 1.01(7)(a)(2) (“The Agency or Presiding Officer shall, unless the Parties otherwise agree, give at least three days' notice of the time and place for the hearing when the Agency or Presiding Officer determines that a hearing on the motion is warranted….The Agency or Presiding Officer may rule on a motion without holding a hearing if delay would seriously injure a Party, or if presentation of testimony or oral argument would not advance the Agency or Presiding Officer's understanding of the issues involved, or if disposition without a hearing would best serve the public interest. The Agency or Presiding Officer may otherwise act on a motion when all Parties have responded or the deadline for response has expired, whichever occurs first”) (emphasis added). [↑](#footnote-ref-1)
2. The facts delineated in prior rulings in this matter are hereby incorporated by reference. The facts herein are for the purposes of this Ruling only and are subject to change after a Hearing on the merits. [↑](#footnote-ref-2)
3. Internal citations omitted. [↑](#footnote-ref-3)
4. See 34 CFR 300.508(b) [↑](#footnote-ref-4)
5. Fed. R. Civ. P. 15(a)(2). [↑](#footnote-ref-5)
6. *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962) [↑](#footnote-ref-6)
7. *The Hilsinger Co. v. Kleen Concepts, LLC*, 164 F. Supp. 3d 195, 198 (D. Mass. 2016) (internal quotations and citations omitted). [↑](#footnote-ref-7)
8. *Palmer v. Champion Mortg.*, 465 F.3d 24, 30–31 (1st Cir.2006). [↑](#footnote-ref-8)
9. BSEA Hearing Rule I(G). [↑](#footnote-ref-9)
10. *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962) [↑](#footnote-ref-10)
11. According to Parent, Hearing officer Reichbach indicated that the issue had to “be added because it could mount to a per se violation.” To the contrary, in *In re: Ollie v. Springfield Public Schools,* BSEA**#**2007894, Hearing Officer wrote, “in the instant case I do not consider the absence of a waiver a per se violation that entitles Parent to compensatory services. Instead, I examine this error in the context of the services actually delivered by Ms. Ewing and Ollie’s progress in his math class during the 2018-2019 school year.” [↑](#footnote-ref-11)