**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: **Parent and Student v. Springfield Public Schools BSEA #2309351**

**RULING ON REQUEST FOR PUBLIC TO ATTEND PREHEARING CONFERENCE**

This matter comes before the BSEA on Parent’s and Student’s document entitled *Opposition to No (sic) Allowing Public Hearing* (*Opposition/Motion*)[[1]](#footnote-1) filed with the BSEA on June 26, 2023[[2]](#footnote-2). Specifically, Parent and Student[[3]](#footnote-3) seek to have the prehearing conference scheduled for June 28, 2023, converted into a public proceeding.

For the reasons articulated below, the *Opposition/Motion* is **DENIED**[[4]](#footnote-4).

DISCUSSION

According to *Rule IV* of the BSEA’s *Hearing Rules for Special Education Appeals* (*Hearing Rules*) prehearing conferences are a procedural option available to parties “only after a request for hearing has been filed with the BSEA and the parties have either completed or waived the resolution session”. Further, prehearing conferences may not delay a hearing date, unless, as in this case, postponement has been granted to provide time for the parties to participate in a prehearing conference[[5]](#footnote-5). The information discussed during a prehearing conference is not part of the record of a due process hearing. To the extent a Party wishes information discussed during a prehearing conference to be considered at a hearing on the merits, it must be re-presented at such hearing on the merits. At the outset of the prehearing conference Parties are advised, as they will be in this case, that anything discussed at a prehearing conference is to remain confidential.

According to *Hearing Rule IV(B)*, the purpose of a prehearing conference is to “clarify or simplify the issues as well as review the possibility of settlement of the case”. *Hearing Rule IV(B)* further advises that appropriate topics at prehearing conferences include,

“clarification of issues; remedies; identification of areas of agreement and disagreement; discovery; date for exchange of exhibits; length of hearing; need for an interpreter or stenographer [at the hearing on the merits]; settlement; prehearing conference orders; and/or organization of the proceedings.”

Finally, *Hearing Rule IV(B)* states that “participants in a prehearing conference must have full authority to settle the case or have immediate access to such authorization.”

The right of Parents to have a *hearing* open to the public is embodied in *Hearing* *Rule X(B)(2) “Rights of All Parties”*. This right is consistent with the federal regulatory right accorded to parents and students under the IDEA[[6]](#footnote-6). There is no legal requirement for a prehearing conference to be a public proceeding, under federal or state law, or in the BSEA’s *Hearing Rules*, and I decline to approve such a request in this case, as opening such proceeding to the public would contravene the above noted purposes of a prehearing conference.

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Parent twice advises in the *Opposition/Motion* that she relies on 34 CFR300.509(c)(1)(ii) as well as a BSEA *Ruling* in a different matter identified as BSEA #20-02451 in support of her request. However, the current version of 34 CFR 300.509 requires state education agencies to develop model forms for parents to file due process complaints and does not contain a subsection (c)[[7]](#footnote-7). Moreover, the *Ruling* in BSEA #20-02451 pertains to a request to open to the public the hearing on the merits, not a prehearing conference, and therefore the *Ruling* in that matter is inapplicable. Parent’s and Student’s *Opposition/Motion* is therefore **DENIED.**

Accordingly, the matter will proceed as follows:

1. The Parties will participate in a prehearing conference on June 28, 2023, from 10:00 a.m. to 1:00 p.m., virtually. A virtual link will be provided separately. The Parties will provide the Hearing Officer with the email address of all persons participating in the Pre-Hearing Conference prior to the close of the business day on June 26, 2023.
2. Members of the public will not be able to participate in the prehearing conference. However, Parent may invite a support person (including but not limited to a person to be her “note taker”) to attend the prehearing conference, provided such person’s email address is timely provided as per Paragraph 1, above, and he or she confirms their adherence to the protocols and procedures of the prehearing conference, including but not limited to agreeing to adhere to the provision that all information discussed during a prehearing conference is to remain confidential.

So Ordered by the Hearing Officer

/s/ Marguerite M. Mitchell

Marguerite M. Mitchell

Dated: June 26, 2023

1. Although this is the title of the Motion, it also contains a line stating “Re: Motion and SPS appearance concern”. [↑](#footnote-ref-1)
2. Although this request is dated June 23, 2023, it was deemed filed on June 26, 2023, as previously noted in the June 26, 2023, *Ruling on Ex-Parte Submissions by Both Parties*. [↑](#footnote-ref-2)
3. The *Opposition/Motion* is only signed by Parent, but in the *Amended Hearing Request*, Parent has also identified herself as Student’s Advocate. Thus, I consider the *Opposition/Motion* to be filed on behalf of both Parent and Student. [↑](#footnote-ref-3)
4. I find it is warranted to shorten deadlines for submission of written objections to the *Opposition/Motion*, and thus issue the instant *Ruling* on this date (June 26, 2023), as the prehearing conference is scheduled to commence on June 28, 2023 at 10:00 a.m. To date no written objections have been filed. Moreover, I do not find that a hearing on a motion is warranted as it will not advance my understanding of the issues involved in the *Opposition/Motion*. [↑](#footnote-ref-4)
5. *Hearing Rule IV(A)*. [↑](#footnote-ref-5)
6. 34 CFR 300.512 (c)(1)(2) “Parents involved in *hearings*” have the right to have the *hearing* open to the public. (Emphasis added). See 34 CFR 300.512 (a) establishing that all of the rights guaranteed under this regulatory provision pertain to parties to “a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514”. [↑](#footnote-ref-6)
7. A prior version of this regulation did contain the language Parent is referencing, however, the current version of this regulation does not. [↑](#footnote-ref-7)