**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

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

 **Springfield School Committee (Including**

 **Melinda Phelps), DESE and Murphy,**

 **Hesse, Toomey & Lehane**

**RULING ON CHALLENGE TO SUFFICIENCY OF HEARING REQUEST**

This matter comes before the Hearing Officer on the *Defendants, Springfield School Committee, Springfield Public Schools, Melinda Phelps, and Murphy, Hesse, Toomey & Lehane, LLP’s, Challenge To the Sufficiency of the Parent’s Request for Hearing* (*Sufficiency Challenge*) filed on April 13, 2023. On March 31, 2023, the disputed *Hearing Request* was filed alleging that the parties against whom it was filed “breach[ed] the IDEA contract and (sic) false promises resulting in a denial of FAPE, ADA and 504 violations” against both Parent and Student.

For the reasons articulated below, the *Sufficiency Challenge* is **ALLOWED**. Parent and Student may file an amended *Hearing Request* containing the information specified in this *Ruling* within 14 calendar days, on or before the close of the business day on May 2, 2023.

PROCEDURAL HISTORY

1. The Hearing Request

As noted above, on March 31, 2023, Parent filed the *Hearing Request* on behalf of herself and Student, asserting claims against several parties, including the Springfield Public Schools, Springfield School Committee, Attorney Melinda Phelps, and Murphy, Hesse, Toomey & Lehane, LLP (“School and Attorney Defendants”) as well as against the Department of Elementary and Secondary Education (“DESE Defendant”). Parent utilized the Bureau of Special Education Appeals’ (BSEA) *Hearing Request Form* in filing her *Hearing Request*.

I summarize, below, those sections of the *Hearing Request* relevant to this Ruling.

First, the option box for “Amended Hearing Request” as opposed to “Initial Hearing Request” was selected, however there is no indication as to what pending BSEA matter this *Hearing Request* is purporting to amend[[1]](#footnote-1). Second, in Section I, “Student Information”, no information was provided in answer to the form’s question “School Student Attends”. Nothing elsewhere in the *Hearing Request* identifies the current school Student attends, or, if he is not attending any school at this time, the last school he attended or when it was last attended. Third, Section III “Person Requesting Hearing”, names, both Parent and Student as “Person Requesting Hearing”, , with the box for “Student (if 18 or older)” selected. However, only Parent signed the Hearing Request on the signature line provided on the form for “Signature of Person Requesting Hearing”[[2]](#footnote-2).

Fourth, Section VII, “Description of the issue(s)”, consists of 7 pages, divided into two parts, labeled “confidentiality” and “requested relief”. The “confidentiality” part begins by setting out 6 numbered alleged instances of improper disclosures or breaches of confidentiality by the School and Attorney Defendants relating to Parent and/or Student, “resulting in a Denial(sic) of FAPE, and ADA violations”. With the exception of Paragraph 6, which refers to actions in March 2023, no dates are provided in these numbered paragraphs.

Next, there are approximately 2 pages of unnumbered allegations provided in paragraph format, about claims of misrepresentations, lies, and the discovery of “new evidence” allegedly proving knowledge on the part of the School and Attorney Defendants of Student’s “sims data being incorrect”, his enrollment status, changes to his school or placement of record, as well as “false information Springfieldfield (sic) Public Schools reported to DESE, resulting in [Student] being denied his right to the Covid MCAS waiver from DESE”. Parent further contends she was not advised as to her “right to appeal (sic) to the MCAS and ask the school committee to request a waiver”. Additionally, the School and Attorney Defendants are alleged to have committed perjury so as to prevent witnesses from testifying in the prior hearings and to have provided false statements to hearing officers in prior hearings, about the “Springfield Empowerment Zone”, “resulting in a denial of FAPE”[[3]](#footnote-3).

Further, the DESE Defendant is alleged to have improperly supervised the Springfield school district, despite knowing of the claims made in the *Hearing Request* including the false statements relating to the Springfield Empowerment Zone and the “SIMS data fraudulently reported by Springfield”, resulting in the Student not receiving “the diploma he is entitled to”. Also, implementation claims are made relating to Student’s IEP provision of tutoring for the Biology MCAS, failure to give the Student “all opportunities for a diploma” and providing a mentor for executive functioning pursuant to a prior mediation agreement. The dates referenced with respect to these 2 pages of claims are April 2019, May 2019, June 2019, 2020, August 17, 2020, August 17, 2022.

Finally, this section delineates 2 paragraphs of claims relating to violations of parental rights. According to Parent, she was not afforded her parental rights under the IDEA to examine all Student’s records and participate in the IEP process, as she was not informed of any changes to Student’s school enrollments and was not provided with all Student’s educational records, including his “sims data” which she had requested in 2021 (the only date referenced in these 2 paragraphs).

The portion of the *Hearing Request* entitled “requested relief”, alleges, in part,

“It is shameful that it took filing a third hearing for the district to provide any evidence that my son has been illegally unenrolled, re-enrolled at least six times and that they are providing false sims data to DESE for retaliation or for more funding, regardless they defrauded the state and the state failed to provide oversight…. The Springfield Public School (sic) retaliation including the multiple breaches of confidentiality denied [Student] a FAPE and because they escaped accountability by lying and because the parent is pro se they have now created a ollieollie@gmail.com(sic) which is a new invasion of privacy and breach of confidentiality…. For the parent and student for violations closure we now seek financial justice that provides relief not only prospectively but also retrospectively. Parents seek a full and complete record for each issue and a fair hearing by the BSEA hearing officer to ensure there is a complete record if appeal is filed.”

This part concludes with a list of 16 numbered questions to be answered at a hearing. The only date contained in the “requested relief” portion of the *Hearing Request* appears in question number 8: “Did the District’s lawyer’s false statements and withholding of evidence result in a denial of FAPE from August 20220 (sic) to Present and denial of parental rights”.

Fifth, Section VIII of the *Hearing Request*, “Proposed resolution of the problem”, contains a paragraph that requests the following relief: a “fair and impartial hearing to ensure that I meet the exhaustion of administrative remedies requirements”; that Student receive his diploma, he would have received if the District had not falsified data; that DESE conduct a full investigation into Student’s file and “provide appropriate corrective action and site (sic) them for falsifying data and lying about the relationship between the Springfield Public Schools and the Springfield Empowerment Zone”; that Parent be reimbursed $5,000.00 spent for MCAS tutoring; that the district and MHTL be “sanctioned so severely they never provide false statements to a hearing officer, or intentionally breach students and parent’s confidentiality again”; and for any other relief to which Student and Parent are entitled, after completing discovery in this matter.

2. The Record to Date and the Sufficiency Challenge

A *Notice of Hearing* was issued on March 31, 2023[[4]](#footnote-4). On April 3, 2023, Parent filed a *Motion for Recussal (sic) or Reassignment”* (*Motion for Recusal*). Neither the School and Attorney Defendants nor the DESE Defendant filed any response or opposition., On April 12, 2023, Parent filed a *Status Report on Motion To (sic) Recussal (sic)*.On April 13, 2023, Hearing Officer Berman issued a *Ruling* denying the *Motion for Recusal* but allowing the matter to be administratively reassigned. On April 13, 2023, this matter was so administratively reassigned to this Hearing Officer.

On April 4, 2023, Parent filed a *Notice of Public Hearing/Change of Venue/Reasonable Accommodation Request* (dated April 3, 2023) (*April 4 Notice*). On April 10, 2023, the School and Attorney Defendants filed a *Request to Postpone the Hearing and Pre-Hearing Conference Call* (*Postponement Request*). Also on April 10, 2023, the DESE Defendant filed a *Motion to Dismiss*.

On April 11, 2023, Parent filed a *Motion for Sanctions Against the Springfield Public Schools Including Melinda Phelps, Springfield School Committee, and Murphy Hess (sic), Tooney (sic) & Lahane (sic) For Ruling in My Favor For District’s Failure to File the Mandatory Response to the Due Process Complaint. Motion to Barr (sic) Above-Named Defendant’s (sic) from Filing Late Response and the Evidence Binder* (dated April 10, 2023) (*Motion for Sanctions*). On April 11, 2023, the School and Attorney Defendants filed a letter in response to the *Motion for Sanctions* advising that they intend to file a sufficiency challenge and a motion to dismiss (*April 11 Letter*). On April 12, 2023, Parent filed a *Motion in Opposition to Defendant’s (sic) Request to Postpone Hearing and Pre-Hearing Conference Call and Motion in Support of My Motions for Sanctions* (*Parent Opposition*).

On April 13, 2023, the School and Attorney Defendants filed the underlying *Sufficiency Challenge* arguing that the *Hearing Request* is insufficient because it does not meet the requirements of *Rule I(B)* of the *Hearing Rules for Special Education Appeals* (*Hearing Rules*) and 20 USC 1415(b)(7). Specifically, they claim that the *Hearing Request* does not provide sufficient information to set forth the “nature of the disagreement, including facts relating to such disagreement” and a “proposed resolution of the disagreement to the extent known and available to the party at the time”. In particular, they contend that the allegations are “largely incomprehensible and silent as to key details, such as the substance of the allegation, the timeframe the Parent is referencing and how such request allegedly concerns the provision of FAPE”.

Further, they submit that the requested relief in the *Hearing Request* “is hopelessly vague and inhibits any sort of meaningful response” with regard to how the 16 itemized questions in the *Hearing Request* relate to alleged violations of the IDEA or Student’s special education rights, or what timeframe is associated with each of the alleged violations. Finally, they argue that, while not exactly clear from the *Hearing Request* itself, to the extent the *Hearing Request* is alleging “irregularities in a prior BSEA hearing”, they should be raised in the pending judicial appeal(s) of those hearings, not through a new hearing request.

On April 18, 2023, Parent filed *Motion to Challenge Defendant’s (sic) Sufficiency* (*Sufficiency Challenge Opposition*), asserting that the *Hearing Request* met all requirements of the IDEA and *Hearing Rule I(B)[[5]](#footnote-5)*. Parent submits that since she is *pro se*, the *Hearing Request* must be construed liberally, and that, as with the Federal Rules of Civil Procedure, the purpose of pleading rules under the IDEA is to provide fair notice to the other party, as explained by the United States Supreme Court. Parent also contends that she has the right to bring a Hearing Request, as a parent, on any matter within the jurisdiction of the BSEA. Moreover, according to Parent, the claims involve alleged actions that denied Student his graduation, and that “graduation is a matter directly related to a change in placement giving the BSEA jurisdiction”. Finally, Parent argues that the Defendants’ filed the *Sufficiency Challenge* “with the sole purpose of having a second bite of the apple, because they failed to file the require response to my due process complaint, did not request an extension and assert extenuating circumstances such as equitable tolling.”

LEGAL STANDARD

Both the IDEA and the BSEA’s *Hearing Rules* specify information that must be contained in hearing requests. Hearing requests must include the name and address of the student, the name of the school the child is attending (along with information regarding homeless youth, if applicable)[[6]](#footnote-6). Hearing requests must also include the nature of the dispute, including facts relating to such dispute, and a proposed resolution of the dispute[[7]](#footnote-7). Further, other contact information such as the name, address and telephone number of the person requesting the hearing, the name address and telephone number of the parent/legal guardian/court-appointed educational decision-maker/educational surrogate parent/person who child lives with and is acting in the place of the parent, the relationship to student of person requesting the hearing, the name of the responsible school district(s) or sate educational or other agency and the name, address, phone number and fax number of an attorneys or advocates for parties must be provided under *Rule I(B)*.

Both the IDEA and *Rule I(E)* of the *Hearing Rules* authorize any party against whom the hearing requestwas filedan opportunity to make a written challenge to the sufficiency of the hearing request within 15 days of receiving it, if the party “believes that the hearing request does not contain the elements set out in Rule IB”[[8]](#footnote-8). Upon receipt of such a challenge, a Hearing Officer within 5 days, must, in writing “… make a determination *on the face of the notice*” if the hearing requestcontains all the statutory requirements (emphasis added)[[9]](#footnote-9). If a hearing request is found insufficient, it must be amended, thereby resulting in new timelines, but if it is deemed sufficient, the original timelines remain[[10]](#footnote-10).

*Standard Adjudicatory Rules of Practice and Procedure* 801 CMR 1.01 at 1.01(6)(c) provides that: “The notice of claim for an Adjudicatory Proceeding shall identify the basis for the claim. The notice shall state clearly and concisely the facts upon which the Party is relying as grounds, the relief sought, and any additional information required by statute or Agency rule.” While the IDEA and the *Hearing Rules* do not characterize the level of detail necessary to include in hearing requests, BSEA Hearing Officers follow the guidance of the United States Supreme Court analyzing the Federal Rules of Civil Procedure, that,

“… do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is a “short and plain statement of the claim” that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests[[11]](#footnote-11).”

Further, hearing requests should be construed liberally when parties are unrepresented, as “[t]he policy behind affording pro se plaintiffs liberal interpretation is that if they present sufficient facts [to state a claim], the court may intuit the correct cause of action, even if it was imperfectly pled” [[12]](#footnote-12). The First Circuit explained that this approach aligns with “[o]ur judicial system [, which] zealously guards the attempts of pro se litigants on their own behalf” while not ignoring the need for compliance with procedural and substantive law[[13]](#footnote-13).

*Hearing* *Rule I(B)* also requires that a hearing request “must be signed and dated by the person requesting the hearing”[[14]](#footnote-14). In Massachusetts, as authorized by the IDEA, upon reaching the age of 18 the educational rights accorded to Parents, including the legal right to file a due process complaint, transfer to the child[[15]](#footnote-15). Pursuant to 603 CMR 28.07(5),

“When the student reaches 18 years of age, he or she shall have the right to make all decisions in relation to special education programs and services. The school district shall have the obligation to obtain consent from the student to continue the student’s special education program. The parents will continue to receive written notices and information but will no longer have decision-making authority, except [in three specific instances]”.

The three exceptions to this rule consist of 1) a parent obtaining legal guardianship, or other legal court-ordered authority over the student; 2) the student choosing to share decision-making with the parent, provided such decision is made in the presence of the Team and documented in written form; or 3) the student choosing to delegate decision-making to the parent, provided such choice is made in writing in the presence of at least one representative of the school district, and is maintained in the student record[[16]](#footnote-16). Thus, absent evidence as to the occurrence of one of these three circumstances, any hearing request that involves a student over the age of 18 must, be brought by the student.

DISCUSSION

Here, after reviewing the *Hearing Request* on its face, as I am required to do, and construing it liberally, I find it is insufficient in several aspects as it does not contain all elements required under both IDEA and the *Hearing Rules*. As a result, Parent and Student shall have 14 calendar days to file an *Amended* *Hearing Request*, specifying the information, *infra*, that I find to be missing, but essential, for the *Hearing Request* to be sufficient. Failure to so file an *Amended Hearing Request* may result in dismissal of this matter without prejudice, pursuant to *Rule I(E).* My reasoning follows.

First, as set forth above, the *Hearing Request* indicates that it is an “amended” not an “initial” Hearing Request. While the selection of this option box on the form may be an error or a carry-over from something prepared for a prior matter, this must be clarified. If, it is indeed an initial hearing request, and the form is so clarified, it can proceed to be addressed in this matter. Should it truly be an amended rearing request, then it will need to be made a part of the record of the proceeding in which the hearing request it is amending was originally filed and handled by that Hearing Officer. An amended hearing request cannot be addressed in a new proceeding[[17]](#footnote-17). As such, **the selection of “amended Hearing Request” is found to be insufficient.**

Second, the *Hearing Request* fails to identify the school that the Student is attending; a requirement under both the IDEA and the *Hearing Rules*[[18]](#footnote-18). Particularly where, as here, the claims involve a student who has reached the age of 18, identification of the school the student is attending (or if the student is no longer attending school, identification of the last school of attendance and date of last attendance) provides important information relevant to Student’s continued eligibility for special education and related services under the IDEA[[19]](#footnote-19). As this could have jurisdictional implications, this is necessary information in this matter. Thus, **failing to identify the school Student attends (or last attended School name and date) is found to be insufficient.**

Third, the *Hearing Request* relates to a Student over the age of 18, however, it is only signed by Parent, and no information is provided as to Parent’s ability to act as Student’s sole educational decision-maker or otherwise as his representative. Thus, in these circumstances, such omission of Student’s signature is in contravention of both the *Hearing Rules* and the *Standard Adjudicatory Rules of Practice and Procedure* applicable to Massachusetts administrative proceedings[[20]](#footnote-20). As the right to pursue a due process hearing under IDEA transfers automatically to a student upon reaching the age of majority (18 years of age in Massachusetts), absent any of the state-established procedures occurring, it is necessary that the *Hearing Request* either contain the signature of Student or otherwise evidence Parent’s right to act on Student’s behalf[[21]](#footnote-21). **Student’s failure to sign the *Hearing Request* renders it insufficient.**

Finally, I turn to the School and Attorney Defendants arguments in support of the *Sufficiency Challenge*. I disagree that the *Hearing Request* is insufficient with respect to the relief sought. Whether the relief identified in the *Hearing Request* is relief that a Hearing Officer has authority to order, is not pertinent to a sufficiency analysis[[22]](#footnote-22). Rather, I conclude that the information contained in Section VIII of the *Hearing Request*, more than sufficiently provides the requisite “proposed resolution” that IDEA and the *Hearing Rules* mandate[[23]](#footnote-23). **The *Hearing Request* provides sufficient statements of proposed resolution.**

However, in the specific circumstances of this proceeding, I do agree that the “confidentiality” part of Section VII of the *Hearing Request* is insufficient as it fails to provide enough specificity as to the dates or timeframe involved, to sufficiently set forth “the nature of the disagreement, including facts relating to such disagreement”[[24]](#footnote-24). Generally, as Parent has argued in the *Sufficiency Challenge Opposition*, hearing requests need only provide a “short plan statement” sufficient to put the other parties on notice of the allegations, and if filed by a *pro se* party, should be construed liberally. Here, however, as discussed in detail below, given the prior proceedings that the *Hearing Request* repeatedly references, even applying a liberal construction, I conclude that more detail as to dates or timeframes, is necessary.

As the *Hearing Request* notes, this is not the first hearing request filed by Parent and/or Student relating to some or all of their claims[[25]](#footnote-25). Further, the *Hearing Request* makes clear, on its face, that the first two hearing requests, referred to as Ollie I and Ollie II, are actively under appeal, pending before the “Federal Court”. Additionally, according to the *Hearing Request*, the third and fourth hearing requests, consolidated in the matter of *In re: Student v. Springfield Public Schools*, BSEA # 22-03555, # 22-10887, “is still currently in active litigation in the Springfield Superior Court”.

The *Hearing Request* also references dates occurring in 2019, 2020 and 2021, which may be beyond the two-year statute of limitations that applies, generally, to due process complaints in IDEA matters[[26]](#footnote-26). While the *Hearing Request* asserts that one of the exceptions to this two-year limitation period applies, based on “newly discovered evidence”, it appears, even applying a liberal reading to the *Hearing Request*, that some or all of this “newly discovered” evidence is relevant to the claims in one or more of the prior matters currently pending before the federal or state courts. The IDEA specifically allows for the introduction of new evidence in civil action appeals of due process hearing decisions. Specifically, under 20 USC 1415 (i)(2)(c), “[i]n any action brought under this paragraph, the court—(i) shall receive the records of the administrative proceedings; *(ii) shall hear additional evidence at the request of a party*; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate” (emphasis added)[[27]](#footnote-27). Moreover, the legal principles of estoppel and *res judicata* apply to subsequent BSEA hearing requests filed by the same parties, precluding the re-litigation of the same claims in a different or new proceeding[[28]](#footnote-28).

As such, only new claims, not currently being adjudicated by the federal or state courts (before which, as noted above, additional evidence can be presented), can be addressed in the instant proceeding, as estoppel and *res judicata* preclude issues relating to claims brought in prior proceedings from being addressed again. For this reason, as well as for reasons of administrative efficiency and appropriate use of administrative resources, I conclude that the specific dates or timeframes applicable to each of the allegations contained in the “confidentiality” part of Section VII of the *Hearing Request* are necessary in the particular circumstances of this case. As such, **more specific date and timeframe information is necessary for this *Hearing Request* to be sufficient**.

CONCLUSION AND ORDER:

The School and Attorney Defendant’s *Sufficiency Challenge* is **ALLOWED**. Within 14 calendar days, on or before the close of the business day on May 2, 2023, Parent and Student shall file an *Amended Hearing Request*, whereupon a *Recalculated Notice of Hearing* will issue establishing new timelines from the date of the filing of the *Amended Hearing Request*. The *Amended Hearing Request* shall contain the following information:

1. Clarification as to whether the *Hearing Request* was an “initial” or “amended” hearing request. If it was truly an “amended” hearing request, the BSEA docket number for the pending BSEA proceeding that it relates to shall be provided.
2. Identification of the school Student is attending or, the name of the school Student last attended, and the date of last attendance.

The signature of both Parent and Student, unless evidence (by way of a copy of a Court Order granting Parent guardianship or current educational decision-making authority over Student, or an Age of Majority Form properly executed delegating educational decision-making authority to Parent) of Parent’s authority to act on behalf of Student in this matter is otherwise provided.

Should any or all of the claims contained in the 6 numbered paragraphs under the “confidentiality” part of the *Hearing Request* remains included in the *Amended Hearing Request*, theyshall specify:

the dates of the emails referenced in Paragraph 1;

the date that the alleged identification occurred in Paragraph 2;

the date that the alleged submission of the binder cover letter occurred in Paragraph 3;

the date of each meeting (both IEP Team meetings and related meetings) referenced in Paragraph 4; and

the date and/or copy of the “record” of the alleged false statements referenced in Paragraph 5.

For any of the remaining allegations in the “confidentiality” part of the *Hearing Request*, Parent and Student should clarify which are new claims or pertain to issues not currently being addressed by the pending litigation in federal or state Court, rather than “newly discovered evidence” relating to pending claims in prior matters.

In light of this determination, the Conference Call scheduled for April 18, 2023, at 4:00 p.m. is **CANCELLED**, subject to being rescheduled. Additionally, *Postponement Request* and *Parent Opposition*, the *Motion to Dismiss*, the *Motion for Sanctions* and the *April 11 Letter* are now moot. However, for purposes of clarifying the record, the *Postponement Request*, the *Motion to Dismiss* and the *Motion for Sanctions* are **DISMISSED without prejudice***.* Additionally, Parent’s *April 4 Notice* is held **IN ABEYANCE** to be addressed at such time as an *Amended Hearing Request* is filed.

So Ordered by the Hearing Officer

/s/ Marguerite M. Mitchell

Marguerite M. Mitchell

Dated: April 18, 2023

1. Within the allegations, however, I do note that there is a reference to this *Hearing Request* having originally been filed as an amended hearing request to a matter which was allegedly withdrawn at the request of the prior hearing officer, who is alleged to have been “not impartial”. According to the *Hearing Request* that proceeding is “still currently in active litigation in the Springfield Superior Court”. There are also multiple references to two prior hearings (referred to as Ollie I and Ollie II). While acknowledging that “Springfield prevailed in both Hearings that were fully adjudicated”, the *Hearing Request* also alleges these matters remain under active appeal in “Federal Court”. However, no matter pending before the BSEA is identified as the matter which this *Hearing Request* is amending. [↑](#footnote-ref-1)
2. No information as to any legal educational decision-making authority Parent has on behalf of Student at this time was provided elsewhere in the *Hearing Request*. [↑](#footnote-ref-2)
3. Multiple references to the prior hearings, and to the actions and findings of the prior Hearing Officers are contained in this part of the allegations. The *Hearing Request* acknowledges repeatedly that these prior matters are all still in active litigation in either the federal courts or the Springfield Superior Court. [↑](#footnote-ref-3)
4. Hearing Officer Sara Berman was initially assigned as the Hearing Officer in this matter. [↑](#footnote-ref-4)
5. Parent also requested a Motions Hearing, open to the public, prior to my making a decision on the *Sufficiency Challenge*, “if any further information is needed or required” to make such decision. [↑](#footnote-ref-5)
6. 20 USC 1415 (b)(2)(B)(7)(A)(ii); 34 CFR 300.508(b); *Hearing Rules I(B)*. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. 20 USC 1415 (c)(2)(A) and (C); 34 CFR 300.508(d)(1). A challenge to the sufficiency of a hearing request is separate and distinct from a motion. No hearing on the sufficiency challenge is available under these requirements either, as the analysis is limited to reviewing the face of the hearing request only, and the timeframe for ruling is accordingly expedited. No additional information can or should be considered. Parent’s request for a hearing is, therefore, denied. [↑](#footnote-ref-8)
9. 20 USC 1415 (c)(2)(D); 34 CFR 300.508(d)(2); *Hearing Rules I(E)*. [↑](#footnote-ref-9)
10. 20 USC 1415 (c)(2)(E); 34 CFR 300.508(d)(4); *Hearing Rules I(E)*. [↑](#footnote-ref-10)
11. *Leatherman v. Tarrant County N ICU*, 507 U.S. 163, 168 (1993). [↑](#footnote-ref-11)
12. See *Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997) (addressing this in the context of summary judgment). [↑](#footnote-ref-12)
13. *Id*.; *In re: Student v. Lawrence Public Schools and DESE*, BSEA # 2107071, 27 MSER 173 (*Ruling*, Kantor-Nir, 2021). [↑](#footnote-ref-13)
14. See 801 CMR 1.01(2)(c), defining “Authorized Representative” to be “an attorney, legal guardian or other person authorized by a Party to represent him in an Adjudicatory Proceeding.”; 801 CMR 1.01(5)(b), “Papers filed with an Agency shall be signed and dated by an unrepresented Party, or by a Party's Authorized Representative”. [↑](#footnote-ref-14)
15. 20 USC 1415(m); 34 CFR 300.520(a)(2); 603 CMR 28.07(5); *see* 603 CMR 28.02, providing in relevant part, in the definition of “Parent” that “… For purposes of special education decision making, parent shall mean father, mother, legal guardian, …. Legal authority of the parent shall transfer to the student when the student reaches 18 years of age.”. [↑](#footnote-ref-15)
16. 603 CMR 28.07 (a) – (c). [↑](#footnote-ref-16)
17. *See* *Hearing Rule I(G)*, entitled “Amending the Hearing Request”. [↑](#footnote-ref-17)
18. 20 USC 1415 (b)(2)(B)(7)(A)(ii); 34 CFR 300.508(b); *Hearing Rules I(B)*. [↑](#footnote-ref-18)
19. 20 USC 1412(a)(1)(B); 34 CFR 300.102(a)(1) and (a)(3); *see* M.G.L. c. 71B § 1; 603 CMR 28.02, definition of “Eligible Student”. [↑](#footnote-ref-19)
20. *Hearing Rule I(B);* See 801 CMR 1.01(2)(c) and (5)(b). [↑](#footnote-ref-20)
21. 20 USC 1415(m); 34 CFR 300.520(a)(2); 603 CMR 28.02 and 28.07(5); *compare In re: Student v. Lawrence Public Schools and DESE*, BSEA # 2107071 (Ruling, Kantor-Nir, 2021) wherein the Hearing Officer did not find the *Hearing Request* to be insufficient despite a 19 year old student having not executed the Age of Majority paperwork, reasoning that “… Student is clearly a complainant in this dispute; his signature on the Hearing Request suggests that his interests are aligned with the assertions therein.” [↑](#footnote-ref-21)
22. *In re: Pembroke Public Schools v. Student*, BSEA # 2108690 (*Ruling*, Kantor-Nir, 2021), reasoning that “Parent’s argument [that a District-filed *Hearing Request* is insufficient due to it allegedly not identifying a violation under 34 CFR 300.507] is misplaced. Whether a *legally*sufficient basis for a claim is articulated in a hearing request is not the standard to be applied by a hearing officer pursuant to the sufficiency challenge provision of the IDEA and BSEA Hearing Rules” (citations omitted) (emphasis in original).  For this reason, I also disregard any of the arguments in the *Sufficiency Challenge Opposition* that pertain to the legal or jurisdictional authority for bringing the *Hearing Request*. [↑](#footnote-ref-22)
23. 20 USC 1415 (b)(2)(B)(7)(A)(ii); 34 CFR 300.508(b); *Hearing Rules I(B)*. While the School and Attorney Defendants’ argument on this point focused on the information under the “requested relief” part of the *Hearing Request* contained in Section VII, not on anything in Section VIII, since I find the information in Section VIII to be sufficient to meet the IDEA’s requirements as to a statement of a proposed resolution, I need not analyze their argument as to the information in the “requested relief” part of Section VII. [↑](#footnote-ref-23)
24. 20 USC 1415 (b)(2)(B)(7)(A)(ii); 34 CFR 300.508(b); *Hearing Rules I(B)*. [↑](#footnote-ref-24)
25. I take administrative notice that this is at least the fifth hearing request filed by Parent and/or Student. Previous matters were *In re: Ollie v. Springfield Public Schools*, BSEA # 20-04776 (i.e. “Ollie I”), In re: Ollie v. Springfield Public Schools, BSEA # 21-02164 (i.e. “Ollie II”), and *In re: Student v. Springfield Public Schools*, BSEA # 22-03555 and BSEA # 22-10887. [↑](#footnote-ref-25)
26. *See* 20 USC 1415 (f)(3)(C) (“A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint….”). [↑](#footnote-ref-26)
27. *Doe v. Newton Pub. Sch.*, 48 F.4th 42, 48 (1st Cir. 2022) If, following such a hearing, the BSEA renders a decision adverse to either the parents or the school district, then the aggrieved party may ‘bring a civil action challenging the outcome ... in either state or federal court.’ … The court in which such an action is brought may consider not only the ‘records of the administrative proceedings’ but also ‘additional evidence at the request of a party.’” (citations omitted). [↑](#footnote-ref-27)
28. *In Re: Department of Elementary and Secondary Education and Xili*, BSEA # 18-02999, 24 MSER 14 (*Ruling*, Byrne 2018) holding that “The common law doctrine of estoppel - in this case *res judicata* and collateral estoppel - prevents BSEA consideration of the Parent's residency-related claims as a Court in this jurisdiction considered and disposed of the same claims, arising from the same factual allegations against the same party. That ruling is binding on the BSEA”; *In Re: The Gifford School and XiLi*, BSEA # 18-03736, 24 MSER 18 (*Ruling*, Byrne 2018), finding that in a case where “[t]he Parent now seeks to assert the same facts and the same claims for the same time period against the same party in interest/privy, [that t]raditional doctrines of estoppel preclude BSEA consideration of those previously determined facts and claims.” (citation omitted). [↑](#footnote-ref-28)