**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Dracut Public Schools BSEA # 2312210**

**RULING ON PARENT’S EMERGENCY MOTION TO HAVE DISTRICT PROVIDE RESPONSE TO DISCOVERY EARLIER**

**AND ON**

**DRACUT PUBLIC SCHOOLS’ REQUEST FOR POSTPONEMENT OF THE HEARING DATE**

This matter comes before the Hearing Officer on *Parent’s Emergency Motion to Have District Provide Response To Discovery Earlier (Motion)* filed on July 11, 2023. In it, Parent asserts that she is making “an emergency motion due to time sensitivity and the need for ADA accommodations.” Specifically, Parent requests that

“the District provide [her] with the records, files, notes, and documents requested in Discovery be provided sooner than the 30 days that is usually given and that date would put it well past the Hearing date. Since these are all public emails and can be easily found in the Districts [sic] server as well as Public Records this could easily be speedily accommodated by the District.”

On July 11, 2023, the District filed Dracut’s *Notice of Intent to File Specific Discovery Objections and Opposition to the Parent's Emergency Motion Regarding Discovery (Opposition to the Parent's Emergency Motion)*, asserting that Dracut should be allowed 30 days to respond to Parent’s discovery request and seeking a postponement of the Hearing date (*Dracut Public Schools’ Request for Postponement of the Hearing Date*).

On July 12, 2023, Parent filed *Rebuttal to the District’s Response to Accelerated Discovery* (*Rebuttal*)[[1]](#footnote-1), asserting, in part, that “it is crucial for the parent to resolve and find a new school that can provide a FAPE as [Student] cannot receive one in Dracut,” and that the “information was requested and promised to the parent months ago and was reasonable for the parent to expect this information to be immediately available.”

Parent is *pro se* in this matter. Neither party has requested a hearing on the *Motion*. Because neither testimony nor oral argument would advance the Hearing Officer’s understanding of the issues involved, this Ruling is issued without a hearing, pursuant to *Bureau of Special Education Appeals Hearing Rule* VII(D).

For the reasons set forth below, Parent’s *Motion* is hereby **DENIED.** *Dracut Public Schools’ Request for Postponement of the Hearing Date* is hereby **ALLOWED***.*

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

On June 1, 2023, Parent filed a Hearing Request with the BSEA. Following a request for postponement which was granted for good cause, the hearing was scheduled for August 3, 2023.

On July 10, 2023, Parent served a request for discovery on Dracut in the above-referenced matter. On July 11, 2023, Parent filed the instant *Motion*, asserting that she is entitled to a “faster response” to her discovery request on the grounds that “these are all public emails and can be easily found in the Districts [sic] server as well as Public Records this could easily be speedily accommodated by the District.” Specifically, “[s]afety plans and measures should already be documented and filed with the investigations especially the ones the District closed so I feel early request is reasonable.” Parent also asserted that she was

“requesting all files requested complete production of files, evidence, and all else pertaining to his investigation pertaining to the Bullying incident investigated by Attorney [] that was done due to my request for a bullying investigation be immediately made available to me. Attorney [] officially ruled and closed on this bullying case and has submitted to these hearings in the District’s response to this claim filed with BSEA. Attorney [] mentions in detail this investigation and report in the District’s response to the parents' BSEA claim. Therefore, it is reasonable that attorney [] has all files, documents, and evidence to support his response to the BSEA. I am requesting the entirety of this case including physical evidence that supports his investigation as this should be made immediately available.”

Parent also requested “the District provide the requested email documents for Discovery within 10 days as that should be sufficient time,” and, moreover, that

“ADA accommodations to the parent be allowed to submit evidence exhibits up until the hearing date that pertains to anything that was found in Discovery, is in public email, or has been digitally submitted to the District and staff. I feel this request is reasonable as the District will be providing it and/or has already seen it. None of it is surprising information [] and I need the extra time to accommodate my disabilities.”

Also via email on July 11, 2023, Parent inquired whether

“there [was] another way to submit exhibits for evidence? I'm not sure if I can put a book together with my disability especially where there are numerous exhibits , well over 100. Is there an easier way to submit these documents?”

On July 11, 2023, the District filed Dracut’s *Opposition to the Parent's Emergency Motion,* asserting that “Parent's Request for Hearing was not granted expedited or accelerated status; nor is there any legitimate basis for discovery to be accelerated, particularly during a time period when school is not in session.” Specifically, the District contended Parent’s discovery consists of “ten (10) categories of documents spanning nine (9) pages” which would be overly burdensome and prejudicial to the District to have to produce within ten (10) days rather than the thirty (30) days contemplated by Hearing Rule V(B). As such, “the hearing date of August 3, 2023[] is no longer reasonable given the amount of discovery requested and the timelines set forth in the Hearing Rules”; the District requested “that discovery be produced within thirty (30) days, with additional time thereafter between discovery production and the first date of hearing so that the parties may review the discovery and include same in their exhibit books” and that the BSEA allow a “postponement of the hearing date []for good cause….”

On July 12, 2023, Parent filed her *Rebuttal*, asserting that

“it is crucial for the parent to resolve and find a new school that can provide a FAPE as [Student] cannot receive one in Dracut. To avoid any further anxiety and panic attacks, starting another school year in a place that cannot provide her with a FAPE and remove [Student] would cause more damage then what she has already endured and would directly affect her disability…. As I have disabilities and require more time to find, register, and do other such things.”

Via email on the same day, Parent added, in part, that the

“information was requested and promised to the parent months ago and was reasonable for the parent to expect this information to be immediately available…. To have the parent wait the 30 days may extend the resolution to go into the next school year and without this safety plan puts the student at risk for harm and further hinder her disability which prevents her from receiving a FAPE. Therefore the parent feels this also establishes the need to accelerate the Discovery.”

**LEGAL STANDARDS AND APPLICATION OF LEGAL STANDARDS:**

Hearing Officers are bound by the *BSEA* *Hearing Rules for Special Education Appeals* (*Hearing Rules*) and the Standard Rules of Adjudicatory Practice and Procedure, 801 Code Mass Regs 1.01.

1. **Parent’s Request for Expedited Discovery.**
2. *Legal Standard for Production of Discovery.*

Pursuant to *BSEA Hearing Rule* V(B), the party upon whom the request is served shall respond within a period of thirty (30) calendar days unless a shorter or longer period of time is established by the Hearing Officer. The party upon whom a request for discovery is served may, within ten (10) calendar days of service of the request, file with the Hearing Officer objections to the request or move for a protective order.[[3]](#footnote-3) BSEA Hearing Rule V(C) allows protective orders to be issued to protect a party from undue burden, expense, delay, or as otherwise deemed appropriate by the Hearing Officer.

1. *Application of Legal Standard.*

Here, Parent filed the Request for Hearing on June 1, 2023, but, despite actively litigating this matter through motion practice, she did not serve discovery requests on the District until July 10, 2023, less than one month before the Hearing is scheduled to begin. Dracut has indicated that it intends to file with the Hearing Officer objections to the Parent’s requests, as is the District’s right pursuant to BSEA Hearing Rules. In addition, Parent’s discovery request is, inarguably, extensive, consisting of “ten (10) categories of documents spanning nine (9) pages.” That the documents sought may be easily accessible to the District and Dracut’s Counsel does not render Parent’s request for discovery production within 10 days reasonable.[[4]](#footnote-4)

Moreover, Parent’s argument that the “information was requested and promised to the parent months ago and was reasonable for the parent to expect this information to be immediately available” is unpersuasive as she conflates the production of “information” through a student records request through IDEA and federal and state student record laws[[5]](#footnote-5) with the production of documents discovery[[6]](#footnote-6). Although the District has an obligation to comply with Parent’s request for student records, in the context of a due process hearing, where Parent has served discovery on the District, the District must abide by discovery timelines, regardless of whether or not the same documents have been requested previously through a student records request.[[7]](#footnote-7)

Nor is Parent’s argument that she requires “accelerated” discovery due to her disabilities

persuasive. The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination against qualified individuals with disabilities. Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.[[8]](#footnote-8) Title II of the ADA applies to the services, programs, and activities of all state and local governments throughout the United States.[[9]](#footnote-9) Prohibited “discrimination” includes “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability....”[[10]](#footnote-10)

However, Parent’s requested accommodation is not reasonable, as it would be prejudicial for the District to have to be required to respond to discovery 20 days earlier than the rules provide, when the matter has not been granted accelerated or expedited status. Despite Parent’s claim that the matter is urgent, the matter was denied expedited status[[11]](#footnote-11) and fails to meet the standard for accelerated hearings.[[12]](#footnote-12) Nevertheless, as Parent has indicated that she requires “more time” as an accommodation, once the requested documents are produced, she may seek a postponement of the Hearing to allow her additional time to review said documents. As such, Parent’s request for “accelerated” or “emergency” production of discovery is hereby **DENIED**, and the District is expected to respond to Parent’s new discovery request within 30 calendar days of its receipt, in accordance with BSEA Hearing Rule V(B).

1. **Parent’s Request for Late Submission of Exhibits**
2. *Legal Standard for Production of Exhibits for Hearing*

The BSEA Hearing Rules establish timelines to enable parties to prepare for, and Hearing Officers to preside over, a hearing that is "conducted in a fair and orderly manner."[[13]](#footnote-13) Pursuant to the Five Day Rule, "copies of all documents to be introduced (exhibits) and a list of the witnesses to be called at the hearing must be received by the opposing party (ies) and the Hearing Officer at least five (5) business days prior to the hearing unless otherwise allowed by the Hearing Officer."[[14]](#footnote-14) The purpose of this rule is to allow all parties the opportunity to adequately respond to the impact of the evidence presented and to eliminate the element of surprise as a strategy that might otherwise be employed to influence the outcome of the hearing decision.[[15]](#footnote-15) However, the IDEA does not prevent the parties from agreeing to disclose relevant information to the parties fewer than five business days prior to a due process hearing.[[16]](#footnote-16)

1. *Application of Legal Standard*.

Parent asks that she be allowed to submit at least some exhibits up until the hearing date as an accommodation for her disability. Nevertheless, Parent’s requested accommodation is not reasonable.[[17]](#footnote-17) Parent requires “extra time to accommodate her disabilities,” and she may be provided “extra time” but not so as to prejudice the District’s ability to prepare for Hearing.[[18]](#footnote-18) In addition, since the Exhibit Books are not due until the close of business day on July 27, 2023, five days before the current Hearing date, Parent’s request for additional time is premature.

Parent also seeks “another way to submit exhibits for evidence,” in that she cannot “put a book together with [her] disability especially where there are numerous exhibits, well over 100.” According to Rule VIII(B), "all exhibits shall be numbered in the upper right hand corner, divided by tabs, and submitted to the Hearing Officer along with a numbered index. Use of loose leaf or other binders is encouraged.” In addition, BSEA Standing Order 23-1, Effective March 9, 2023, states that "[i]n addition to emailing, all Hearing Requests, motions, pleadings documents, correspondence and other written communications over 25 pages (inclusive of exhibits), shall also be mailed or delivered in hand to the office of the BSEA."

Again, although Parent is entitled to a reasonable accommodation, She has not indicated an alternative mode for production to accommodate her disabilities.[[19]](#footnote-19) Where Parent requires “extra time” on the basis of her disability to assemble the binders, the Hearing Officer notes that, as the Hearing is currently scheduled for August 3, 2023, the Exhibit Books are not due for another 15 days.

As such, Parent’s requests “to submit evidence exhibits up until the hearing date” and to submit them in “another way” are hereby **DENIED**.

1. **Dracut’s Request to Postpone the Hearing Date.**
2. *Legal Standard for Postponement of Hearing Date.*

BSEA *Hearing Rule*III governs requests for postponement. Pursuant to this rule, a party may request postponement of a hearing at least 6 business days before the scheduled hearing date, and the Hearing Officer may grant this request for good cause.[[20]](#footnote-20) The decision whether to postpone a hearing is within the discretion of the Hearing Officer, who must give serious consideration to opposition to a request. Similarly, 801 CMR 1.01(7)(d) states that

“[f]or good cause shown a scheduled hearing may be continued to another date:

1. by agreement of all Parties with the permission of the Presiding Officer, provided the Presiding Officer receives a letter confirming the request and agreement before the hearing date; or

2. by written motion to continue made by a Party at least three days prior to the hearing date; or

3. by the Presiding Officer on his or her own motion or upon a motion to continue made at the scheduled hearing.”

The timelines for due process hearings and reviews described in 34 CFR § 300.515(a) and (b) may only be extended if a hearing officer or reviewing officer exercises the authority to grant a specific extension of time at the request of a party to the hearing or review.[[21]](#footnote-21)

1. *Application of Legal Standard.*

Dracut asserts that “[t]o the extent the Parent's position is that the requested [discovery] documents are essential and necessary in order to prosecute the issues raised, it is apparent that the hearing date of August 3, 2023, is no longer reasonable given the amount of discovery requested and the timelines set forth in the Hearing Rules.” In light of the District’s need to produce discovery “within thirty (30) days,” the District seeks “additional time thereafter between discovery production and the first date of hearing so that the parties may review the discovery and include same in their exhibit books” and argues that “a postponement of the hearing date would be for good cause under these circumstances.” Parent opposes the postponement.

As evidenced by her July 11, 2023 discovery request, Parent seeks to engage in extensive discovery, and, as I indicated *supra*, the District is entitled to 30 days to respond to said discovery, especially as the matter has not met neither the expedited nor the accelerated standard. In addition, Parent has expressed that she requires additional time to review discovery and to prepare and submit exhibits. Although the delay will not yield a Decision on the merits until after the start of the new school year, a short postponement of the Hearing will not result in prejudice to Parent and Student. As such, the District’s request for a postponement of at least 30 days is reasonable and is **ALLOWED** for good cause.

**ORDER**:

Parent’s *Motion* is hereby DENIED. *Dracut Public Schools’ Request for Postponement of the Hearing Date* is hereby ALLOWED. **The Parties understand that this request extends the 45 day IDEA timeline and delays issuance of the Decision.** Accordingly, the matter will proceed as follows:

1. The Hearing will take place via a virtual platform on August 16, 17, and 18[[22]](#footnote-22), 2023. It will begin at 9:00AM.
2. Exhibits and witness lists are due by the close of business day on August 9, 2023.

The parties are reminded that all requests for postponement must be in writing and specify the reasons for requesting the postponement and the length of the postponement desired/agreed. Should the parties reach a settlement agreement prior to the Hearing, the moving party shall submit a withdrawal of the Hearing. Failure to appear at the Hearing may result in dismissal of the matter with or without prejudice.

So Ordered by the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir

Dated: July 13, 2023

1. Parent’s *Rebuttal* was accompanied by 6 emails dated the same day. [↑](#footnote-ref-1)
2. For an extensive review of the relevant procedural history in this matter, see *In Re:* *Student v. Dracut (Ruling on Parent’s Motion for Reconsideration)*, BSEA # 2312210 (Kantor Nir, July 11, 2023) (delineating the following issues for Hearing: (1) Whether Dracut’s proposed 504 Plan is appropriate; (2) Whether the District failed to meet with Parent to amend Student’s 504 Plan in violation of the procedural requirements of Section 504; (3) Whether the District retaliated against Parent by ‘taking back’ the 504 Plan and insisting that Parent provide additional documentation of Student’s diagnosis; (4) Whether the District failed to implement accepted portions of Student’s 504 Plan; and (5) Whether Dracut failed to investigate the March 2023 sexual assault incident, and, if so, whether such failure denied Student a FAPE). [↑](#footnote-ref-2)
3. BSEA Hearing Rule V(C). [↑](#footnote-ref-3)
4. BSEA Hearing Rule V(C); see *In re: Ollie v. Springfield Public Schools (Second Ruling on Multiple Motions)*, BSEA #2007894 (Reichbach, 2020) (“nothing requires the District to respond immediately”). [↑](#footnote-ref-4)
5. See MGL c.71, § 34D (and 603 CMR 23.00 *et seq*.), 34 CFR 300.623, and 20 U.S.C. § 1232g (and 34 CFR Part 99). [↑](#footnote-ref-5)
6. See BSEA Hearing Rule V(B) and Fed. R. Civ. P. 26. [↑](#footnote-ref-6)
7. This Ruling does not address Parent’s claim that the District failed to provide her with student records. This claim was dismissed with prejudice in *In Re: Student v. Dracut (Motion to Dismiss the Parent’s Request for Hearing and Memorandum of Law in Support Thereof and Response to the Parent’s Request for Hearing)*, BSEA # 2312210 (Kantor Nir, June 30, 2023). [↑](#footnote-ref-7)
8. 42 U.S.C. § 12132. [↑](#footnote-ref-8)
9. 42 U.S.C. § 12131(1)(A), (B). [↑](#footnote-ref-9)
10. 42 U.S.C. § 12112(b)(5)(A). [↑](#footnote-ref-10)
11. On June 2, 2023, BSEA Director Reece Erlichman denied expedited status to the matter for failure to meet the standard for an expedited hearing pursuant to 20 USC 1415 or the applicable *Hearing Rules for Special Education Appeals*. [↑](#footnote-ref-11)
12. See BSEA Hearing Rule II(D). [↑](#footnote-ref-12)
13. BSEA Hearing Rule IX(A). [↑](#footnote-ref-13)
14. BSEA Hearing Rule VIII(A). Any party to a hearing conducted pursuant to 34 CFR 300.507 through 34 CFR 300.513 or 34 CFR 300.530 through 34 CFR 300.534 or an appeal conducted pursuant to 34 CFR 300.514 has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing. See 34 CFR 300.512(a)(3). [↑](#footnote-ref-14)
15. See *Letter to Steinke*, 18 IDELR 739 (OSEP 1992). [↑](#footnote-ref-15)
16. 71 Fed. Reg. 46,706 (2006). [↑](#footnote-ref-16)
17. See *Doe v. Richmond Consol. Sch. Dist.,* No. CV 15-30027-MGM, 2016 WL 3064056, at \*5 (D. Mass. May 31, 2016) (agreeing with the Hearing Officer’s decision to discount evidence offered by Student's parents because “[a]lthough Parent [was] entitled to reasonable accommodations pursuant to the ADA, … Plaintiff's decision to wait until the eve of the hearing to provide the expert report to the School District did not merely inconvenience the School District, but circumvented the collaborative TEAM process established under the IDEA”). [↑](#footnote-ref-17)
18. See *id.* [↑](#footnote-ref-18)
19. In light of the fact that Parent has “well over 100 [exhibits],” email production will not be allowed. [↑](#footnote-ref-19)
20. See *BSEA Hearing Rule* III (A); see also 34 C.F.R. §300.515. [↑](#footnote-ref-20)
21. See 34 C.F.R. §300.515(c). [↑](#footnote-ref-21)
22. Due to the number of issues raised by the Request for Hearing in this matter, the Hearing Officer has reserved three dates for hearing. [↑](#footnote-ref-22)