**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: **Student v. Littleton Public Schools BSEA #2312897**

**RULING ON LITTLETON PUBLIC SCHOOLS’ REQUEST FOR POSTPONEMENT**

This matter comes before the BSEA on the June 28, 2023 Littleton Public Schools’ (Littleton or the District) request to postpone the initial hearing date of July 21, 2023 in the above referenced matter. Parents objected to the postponement and requested that the matter proceed on July 21, 2023 or, in the alternative, that the hearing date be advanced to July 12, 2023.

On July 5, 2023, Parents filed their Opposition to Stalling Hearing[[1]](#footnote-1) (*Opposition*), asserting as follows:

“It is our feeling that the district is using this as a ruse to checkbox their obligation of having attempted, feebly, to convene a resolution meeting with the sole intent of indefinitely stalling our progress by stalling the hearing…. We do not wish to stall the hearing and have attested to our commitment to resolution and mediation at the hearing pre-conference call. It is up to the district to agree to

either offer reasonable accommodations, which ensure our safety, so that we do not feel under duress, manipulated or coerced. We have agreed to meet remotely with note takers and are still willing to do this…. [W]e want to re-state that we feel vacation is not a compelling reason to delay and prevent us from having a resolution….”

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On the same date, Parents also filed Objections to Postponement[[2]](#footnote-2) (*Objections*), asserting, in part, that “[p]ostponing would be incredibly detrimental and damaging both to the mental health of [Student], as well as the collective stress level of our family given that we have pre-and post-op care for a first degree member of our family, which is scheduled at the end of July.”

Neither party has requested a hearing on either request. 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, the District’s request for postponement is hereby **DENIED**. Contingent upon the resolution session or a mediation in lieu thereof having occurred, the Hearing will take place via a virtual platform on July 21, 2023.

**RELEVANT PROCEDURAL HISTORY:**

On June 16, 2023, Parents filed a Hearing Request asserting the following:

“On 05/01/2023 we dropped off an IEE request at the superintendent's office and received a stamped receipt. The district has not explicitly agree[] to fund the IEE, nor have they filed with the BSEA. We emailed teachers on 06/12/23 requesting neuropsych [sic] rating scales be filled out per request of neuropsychologist and never heard back for 5 school days -- thereby confirming the district has no intent on paying for it despite any good faith effort on our part.

… [T]he school had an obligation to carry out an FBA when requested by parents under IDEA and federal guidelines. We had asked for one in writing and given consent on the IEP consent form.”

Parents sought the following relief:

“Given that the district of Littleton violated both state and federal SPED laws, (and is the second time they have done so against our family in 3 years), we request that BSEA rules that Littleton reimburses us in full for a qualified licensed professional to conduct both an FBA during the next academic year and an independent educational evaluation in all areas of suspected and current disability as outlined in the IEP evaluation request at full cost. The district had the opportunity to conduct them at state rates and refused, and continued to discriminate against our family. We respectfully request they reimburse us at the full rate of the provider who had the earlier opening.”

On June 26, 2023, Littleton responded, stating that Parent is

“not entitled to Independent Educational Evaluations in all suspected areas of disability beyond the state rates, and calls upon the Parents as the moving party, to prove any claims to the contrary…. Parents are not entitled to Independent Educational Evaluations for an FBA beyond the state rates... The District further asserts that because the District had proposed and the Parents refused consent to an FBA, the Parents are not entitled to public funding for an IEE for that evaluation.”

On June 28, 2023, Counsel for the District requested a postponement of the hearing as Counsel “will be out-of-state on vacation based on long-standing plans with his family.”

On June 29, 2023, objected to the postponement via email, asserting that they “not able to accommodate any hearing date delays due to a surgical procedure the following week that takes 4-6 weeks of healing.”

In response, on June 29, 2023, the District responded via email stating that Littleton cannot accommodate an earlier hearing date

“for several reasons including the desire to engage in discovery and the inability to engage in hearing prep due to staff vacations prior to that week. The District would be significantly prejudiced by such an advancement. Significantly, the District has attempted to schedule a resolution session and the parent has declined that opportunity, cancelling at 9:59 a.m. today for a 10 a.m. resolution session. The District is not willing to waive the resolution session in this case. For that reason, the matter cannot move forward until that resolution session occurs, which will need to be after July 10th, due to availability of our staff prior to that date.”

On the same date, Parents responded as follows:

“Canceling the resolution meeting would require that [Parents] had consented to the singular specific time [the Director of Special Education had] set up and [they] had not been given the chance to consent to that time. [Parents] received an email two days ago requesting a ‘resolution meeting’ -- there are two outstanding BSEA cases against the district [relating to two of Parents’ children,] and [the Director of Special Education] did not specify which BSEA case the meeting was. [Parents] asked her yesterday morning, and she did not respond until last night. The district is attempting to continue delaying the hearing and not being clear or reasonable about resolution meetings. Does the BSEA think a vague email from 2 days ago constitutes sufficient[sic] to set up a resolution meeting without discussing availability for this morning?

In fact, [Parents] categorically agreed to a resolution meeting in my email to [the Director of Special Education] and have not heard a response, thereby assuming the district is unwilling to have one…. [Parents are] amenable and have never rejected or cancelled one….”

In support of their response, Parents provided a June 29, 2023 email to the Director of Special Education, stating,

“[g]iven the sudden change in your behavior, I’m left to feel unsafe and I will have to proceed with caution, keeping in mind that there is a tremendous unilateral power imbalance given that you have retained an attorney. If you would like to have a resolution meeting regarding the BSEA case with [Student’s brother], I would be happy to review a written resolution proposal presented to me 3 days before a recorded zoom resolution meeting where we both have copies and there is a verifiable district ombudsperson present.

I am at a very uncomfortable meeting with you alone again without legal representation.”

On June 30, 2023, the parties participated in a conference call with the undersigned Hearing Officer. The District proposed as alternate hearing dates either July 24 or July 28, 2023.

During the call, Parent (Mother) clarified that a family member is having surgery the week of July 24, 2023, and Parent is the primary caretaker. Parent also stated that this matter has been a “stressor,” and she wishes to have it resolved prior to the surgery. Parent indicated that Student is scheduled for a neuropsychological evaluation on August 8, 2023.

With regard to the resolution meeting, Parent indicated that she felt “unsafe” meeting with the District. She had agreed to meet but requested to have the resolution meeting recorded for her “safety” and “for the truth.” The District declined the “conditions imposed” by Parent. As such, the resolution meeting has not been held to date.

During the conference call, Counsel indicated that Parents could bring a notetaker to the meeting and that the meeting could be held via a virtual format. Also during the call, Parent indicated that she would be amenable to participate in mediation in lieu of a resolution meeting.

On July 5, 2023, Counsel informed the Hearing Officer via email that Littleton is amenable to participating in mediation, and, as such, “on Friday, June 30th, Littleton reached out to the BSEA mediators seeking availability to conduct a mediation during the week of July 10th…. [T]he District is still awaiting a response. Assuming that Parent is still amenable to mediation as she had stated during the June 30, 2023 phone conference, the District would maintain its request for postponement with the additional reason to allow the parties the opportunity to participate in mediation and explore resolution.”

Also on July 5, 2023, Parents filed their *Objections* and *Opposition*.

**LEGAL STANDARDS:**

1. *Legal Standard for Postponement of Hearing Date.*

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. 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.[[3]](#footnote-3)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.[[4]](#footnote-4) A hearing officer may not unilaterally extend the 45-day due process hearing timeline. Also, a hearing officer may not extend the hearing decision timeline for an unspecified time period, even if a party to the hearing requests an extension but does not specify a time period for the extension.[[5]](#footnote-5)

Caselaw further demonstrates that whether to continue any judicial proceeding is a matter entrusted to the sound discretion of the judge, and his decision will be upheld absent an abuse of that discretion.[[6]](#footnote-6) However, such discretion is not unfettered.[[7]](#footnote-7)  In considering a request for a continuance, a judge should consider whether the failure to grant a continuance “would be likely to make a continuation of the proceeding impossible, or result in a miscarriage of justice.”[[8]](#footnote-8) In determining whether to grant a continuance, judges are to be guided by the “controlling principle ... that a continuance should be granted only when justice requires.”[[9]](#footnote-9)

1. *Legal Standard for Resolution Meeting.*

The Individuals with Disabilities in Education Act (IDEA) requires a school district to hold a resolution session within 15 days of receiving notice of a parent’s due process complaint.[[10]](#footnote-10) When a party files an amended due process complaint, the timelines for the resolution meeting begin again with the filing of the amended complaint.[[11]](#footnote-11) A resolution meeting is required unless both the parent and the district agree to waive it or agree to use the mediation process in lieu of the resolution meeting.[[12]](#footnote-12) The purpose of this requirement is to ensure that the parties have an opportunity to resolve the parent’s complaint before engaging in due process.[[13]](#footnote-13)

The burden is on the local educational agency to convene the resolution meeting.[[14]](#footnote-14) The district does not have to convene a resolution meeting if: 1) the parent and the district agree in writing to waive the meeting; or 2) the parent and the district agree to mediate the dispute.[[15]](#footnote-15) If the district fails to hold the resolution meeting within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.[[16]](#footnote-16) In addition, if the district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in 34 CFR § 300.322(d)), the district may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.[[17]](#footnote-17)

**APPLICATION OF LEGAL STANDARDS:**

Here, the District seeks a postponement of the initial hearing date on the grounds that Counsel is on a pre-planned vacation on said date. Littleton further argues that the hearing cannot proceed because Parents have refused to participate in the resolution meeting which the District has attempted to convene. In response, Parents assert that a vacation is not good cause for a postponement. Furthermore, Parents assert that they have not refused to participate in the resolution meeting but rather that they have asked the District to allow them to record the meeting for “safety” and for “the truth.”

I first address whether Counsel’s pre-planned vacation constitutes “good cause” for postponement pursuant to the IDEA. In the instant matter, Parent’s Hearing Request essentially seeks reimbursement for the costs of a neuropsychological evaluation that is scheduled for August 8, 2023, and for an FBA to be conducted in the 2023-2024 school year. Currently, the initial hearing date is Friday, July 21, 2023. The District has proposed Monday, July 24, or Friday, 28, 2023 as alternative hearing dates. I cannot find that a single business day delay (or even 6 business days) would result in a “miscarriage of justice,” especially as the Hearing Officer is willing to issue the Decision in accordance with the timeline established by the July 21 date even were the Hearing to take place on the offered July dates.

Nevertheless, Parents are unavailable on July 24 or 28 and for 4 to 6 weeks thereafter due to a medical situation requiring Parent’s caretaking responsibilities. Although hearing officers may grant specific extensions at the request of either party, hearing officers must be mindful of the parent's right to have a final decision rendered within the time periods defined in the IDEA.[[18]](#footnote-18) As such, I must balance the District’s right to be represented by Littleton’s counsel of choice and the Parents’ rights under IDEA. Given that Counsel is not a solo practitioner, that Counsel’s involvement in the matter has been limited, and that Parents are unavailable on the alternate days offered by the District owing to a medically related issue, the District’s request for postponement on the grounds of Counsel’s unavailability is **DENIED**.

I next address the IDEA’s resolution session requirement and how it interfaces with the hearing date. Here, Littleton has indicated that it would not waive the resolution meeting, and although the parties have agreed to use the mediation process in lieu of a resolution meeting, a mediation date has not yet been set. Thus, a resolution meeting is still required before a hearing can be held.[[19]](#footnote-19) The District attempted to convene a resolution meeting on June 29, 2023, within 15 days of receiving notice of Parents’ due process complaint, and prior to the initiation of the due process hearing.[[20]](#footnote-20) Parents did not participate and argue that the two days’ notice provided by the District for that meeting was not sufficient. Neither the IDEA nor its implementing regulations specify how much notice time is required for a resolution meeting, and I find that two days’ notice as provided by Littleton in the instant matter was not unreasonable.

While Parents have agreed to participate in the resolution process, their participation is conditional, and the imposition of the requested conditions has had the effect of stalling the process.[[21]](#footnote-21) In other words, the District has satisfied its responsibility to attempt to schedule a resolution meeting, but Parents’ insistence on recording the meeting has prevented the meeting from occurring, and as such, they have constructively refused to participate.[[22]](#footnote-22) Therefore, a resolution session must be held with both parties present before a due process hearing can take place.[[23]](#footnote-23)

In addition, the IDEA does not toll the due process timelines delineated in 34 C.F.R. §300.511 when the parties are attempting to resolve their dispute through mediation. Therefore, even if the parties proceed to mediation in lieu of a resolution meeting, as both have indicated a willingness to do, the due process timelines apply, unless the parties agree otherwise.[[24]](#footnote-24) As such, the District’s request to postpone the Hearing to “allow the parties the opportunity to participate in mediation and explore resolution” is also **DENIED**, unless, by agreement of the parties, a postponement of the Hearing is sought in order to accommodate the availability of the BSEA mediator.

**ORDER:**

The District’s request for postponement is **DENIED**. Accordingly, the matter will proceed as follows:

1. Contingent upon the resolution session or a mediation in lieu thereof **having occurred**, the Hearing will take place via a **virtual** platform on July 21, 2023. It will begin at 9:00AM.
2. Exhibits and witness lists are due by the close of business day on July 14, 2023.
3. If Parents refuse to participate in the resolution meeting, Littleton may, at the conclusion of the resolution period, motion the BSEA to dismiss the matter.[[25]](#footnote-25)

The parties are reminded that all requests for postponements 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 5, 2023

1. Parents submitted Exhibits A through C in support of their *Opposition*. [↑](#footnote-ref-1)
2. Parents submitted Exhibits A to G in support of their *Objections*. [↑](#footnote-ref-2)
3. See *BSEA Hearing Rule* III (A); see also 34 C.F.R. §300.515. [↑](#footnote-ref-3)
4. See 34 C.F.R. §300.515(c). [↑](#footnote-ref-4)
5. See *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Educ. Act (Part B),* 61 IDELR 232 (OSEP 2013). [↑](#footnote-ref-5)
6. See, e.g., *Commonwealth v. Fall River Motor Sales, Inc*., 409 Mass. 302, 307, 565 N.E.2d 1205 (1991); *Caira v. Zurich Am. Ins. Co*., 91 Mass. App. Ct. 374, 384, 76 N.E.3d 1002, 1011 (2017); *In re: Quinn*, 54 Mass. App. Ct. 117, 120, 763 N.E.2d 573, 577–78 (2002). [↑](#footnote-ref-6)
7. See, e.g., *Commonwealth v. Super,* 431 Mass. 492, 496, 727 N.E.2d 1175 (2000); Commonwealth v. Clegg, 61 Mass.App.Ct. 197, 200, 808 N.E.2d 818 (2004); *Com. v. Burston*, 77 Mass. App. Ct. 411, 417, 931 N.E.2d 1019, 1024 (2010). [↑](#footnote-ref-7)
8. *Com. v. Borders*, 73 Mass. App. Ct. 911, 912, 900 N.E.2d 117, 119 (2009) (internal quotations and citations omitted). [↑](#footnote-ref-8)
9. *Burston*, 77 Mass. App. Ct. at 417. [↑](#footnote-ref-9)
10. See 20 U.S.C. §1415(f)(1)(B); 34 C.F.R. §300.510(a). [↑](#footnote-ref-10)
11. 34 CFR C.F.R. §.508 (d)(4); 71 Fed. Reg. 46,698 (2006). [↑](#footnote-ref-11)
12. See 34 C.F.R. §300.510(a)(3). [↑](#footnote-ref-12)
13. See 34 C.F.R. §300.510(a)(2); see also *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Educ. Act (Part B),* 61 IDELR 232 (OSEP 2013). [↑](#footnote-ref-13)
14. See 34 C.F.R. §300.510(a)(1). [↑](#footnote-ref-14)
15. 34 C.F.R. §300.510 (a)(3). [↑](#footnote-ref-15)
16. 34 C.F.R. §300.510 (b)(5). [↑](#footnote-ref-16)
17. See 34 C.F.R. § 300.510(b)(4). [↑](#footnote-ref-17)
18. See 34 34 C.F.R. §300.515(c) (a hearing officer may grant specific extensions of time at the request of either party); cf. *Letter to Weiner*, 57 IDELR 79 (OSEP 2010) (the final decision should not extend beyond the 45-day deadline set by the implementing regulation at 34 CFR 300.515(a)); *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Educ. Act (Part B),* 61 IDELR 232 (OSEP 2013) (“Note though that a hearing officer may grant a specific extension of the 45-day timeline at the request of either party”). [↑](#footnote-ref-18)
19. See 34 C.F.R. §300.510(a)(3). [↑](#footnote-ref-19)
20. See 34 C.F.R. §300.510(a)(1). If the district is unable to obtain the parent's participation in the resolution meeting after diligent efforts, and documenting those efforts, it may, at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent's due process complaint. See 34 C.F.R. §300.510(b)(4) and *Dispute Resolution Procedures under Part B of the Individuals with Disabilities Educ. Act (Part B),* 61 IDELR 232 (OSEP 2013); see also *Beaverton Sch. Dist*., 62 IDELR 70 (SEA OR 2013) (where the district made eight phone calls and sent 12 emails to a parent after receiving notice of her due process complaint, the administrative law judge concluded that the district had made reasonable efforts to ensure the parent's participation). [↑](#footnote-ref-20)
21. See 34 C.F.R. §300.510(b)(3); see also *Matthews v. Douglas Cnty. Sch. Dist. Re 1*, No. 17-CV-03163-MSK-STV, 2021 WL 516302, at \*5 (D. Colo. Feb. 11, 2021) (finding that “the Plaintiffs refused to participate [in the resolution meeting when they] impos[ed] a condition that the District file a response to their complaint before they would consent to a resolution meeting”); *Colbert Cnty. Bd. of Educ. v. B.R.T.*, No. CV-07-J-1430-NW, 2008 WL 11305871, at \*8 (N.D. Ala. June 19, 2008) (finding that “it is irrelevant whether one party deserves more blame than the other party because the issue is whether a due process hearing can be held where no resolution meeting has been held….While the ALJ may be correct that a fact issue existed as to whether the school board ‘thwarted’ the resolution process, the resolution of that issue is irrelevant because there is no exception allowing the due process hearing to proceed without a resolution meeting. The ALJ should have refused to hold the due process hearing until the parties held or jointly waived the resolution meeting”); *Marinette Sch. Dist.,* 47 IDELR 143 (SEA WI 2007) (dismissing the due process complaint of a parent who refused to participate in a resolution meeting unless the district signed a confidentiality agreement). [↑](#footnote-ref-21)
22. The District is encouraged to continue to work with Parent to secure her participation. See, for example, *Letter to Eig*, 59 IDELR 81 (OSEP 2012) (the district should offer alternative means of participation, such as videoconferences or conference telephone calls and document the efforts to secure parental participation). [↑](#footnote-ref-22)
23. See 20 U.S.C. § 1415(f)(1)(B)(i); see also *Cobb County Sch. Dist.,* 63 IDELR 175 (SEA GA 2014) (although a parent may not wish to participate in a resolution meeting, she must attend unless the district agrees to waive the resolution process). [↑](#footnote-ref-23)
24. See 34 C.F.R. §300.506 (b)(1)(ii); see also *Dispute Resolution Procedures under Part B of the Individuals With Disabilities Educ. Act (Part B),* 61 IDELR 232 (OSEP 2013) (“a State's procedures governing mediation must ensure that: (1) the mediation process is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the IDEA; and (2) each session in the mediation process is scheduled in a timely manner. 34 CFR § 300.506(b)(1)(ii) and (5)”) [↑](#footnote-ref-24)
25. See, for example, *Marinette Sch. Dist.,* 47 IDELR 143 (SEA WI 2007) (parent's refusal to participate in a resolution meeting warranted dismissal of her due process complaint). [↑](#footnote-ref-25)