**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Attleboro Public Schools BSEA # 2313823**

**RULING ON PARENT’S MOTION TO EXCLUDE DISTRICT’S RESPONSE TO HEARING REQUEST**

**AND**

**ATTLEBORO PUBLIC SCHOOLS’ REQUEST TO POSTPONE**

This matter comes before the Hearing Officer on *Parent’s Motion to Exclude District’s Response to Hearing Request (Motion)* filed on July 14, 2023. In it, Parent asserts that the Notice of Hearing dated July 3, 2023 provided that the procedural deadline for filing a Response to Hearing Request was July 11, 2023, but Attleboro Public Schools’ “Response was not filed in a timely manner as it was filed with BSEA on July 12, 2023.”

On July 24, 2023, Attleboro Public Schools (Attleboro or the District) filed its *Opposition to the Parents' Motion to Exclude the District's Response to Hearing Request (Opposition)*, asserting that

“[i]n this case, the District received the Request for Hearing on Friday, June 30th, just prior to the holiday weekend. Despite the July 4th holiday and staff vacations during that period, the District was able to provide a comprehensive response by July 12, 2023, one (1) day after the deadline set forth in the BSEA Notice of Hearing. Under these circumstances, the Parents do not allege, nor can they demonstrate, how the one (1) day delay in submission of the Response to Hearing Request has resulted in any prejudice to the Parents. Additionally, this counsel is unaware of any such prior BSEA decision or rule in which such extraordinary relief (essentially denying the ability of the District to submit its written defense) was granted.”

The parties presented their arguments to the Hearing officer during a conference call on July 25, 2023. Parent asserted that the District’s delay in submitting its Response is “a pattern for disregard for process.” For instance, prior to filing the Hearing Request, Parents had requested mediation and waited for over a month for the District to respond to their request.

Also during the conference call, the parties discussed postponement of the automatic hearing date. Subsequently, on July 27, 2023, the District filed a request to postpone the automatic hearing date on the grounds that Parents have “declined to participate in the resolution session and the District is not in agreement to waive it. For that reason, the parties will need additional time to conduct the resolution as well as to engage in discovery." (*Request to Postpone*).[[1]](#footnote-1) Attleboro requested that the Hearing be postponed until September 26, 2023.

For the reasons set forth below, Parent’s *Motion to Exclude* is DENIED. Attleboro’s *Request to Postpone* is ALLOWED.

**LEGAL STANDARD:**

1. *Legal Standard for Excluding Response.*

BSEA Hearing Rule I (D) provides that “[w]ithin ten (10) calendar days of receipt of the moving party’s hearing request, the opposing party must send to the other party and the Hearing Officer a response that specifically addresses the issues raised in the hearing request. However, if the school district sent a prior written notice to the parent regarding the issues raised in the parent’s hearing request in accordance with 34 C.F.R. § 300.503, the school district need not send an additional response.”

The *BSEA Hearing Rules* do not address motions to exclude or strike a response due to untimely filing. Hence, I look to the Massachusetts and Federal Rules of Civil Procedure for guidance. Pursuant to the Massachusetts Rules of Civil Procedure, which mirror, to a large extent the Federal Rules of Civil Procedure, answers to pleadings must be filed within 20 days and contain all defenses to a claim, including affirmative defenses, as well as an admission, denial, or statement of insufficient knowledge to each of the allegations upon which the claim relies.[[2]](#footnote-2) Mass. R. Civ. Pro. 6(b)(2) provides that when “an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion … upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.”

On the other hand, pursuant to Mass. R. Civ. Pro 12(f), a pleading or a part of a pleading can be removed from the record if it is redundant, immaterial, impertinent, or scandalous. The motion can be made by a party within an allotted time frame, or can be raised by the court sua sponte. A motion to strike a defendant’s pleading, if granted, in effect, removes the pleading from the record. When examining motions to strike, courts are faced “with the difficult task of balancing the strong interest in resolving cases on the merits with the strong interest in promoting efficiency and compliance with the Orders of the Court and the rules of procedure.”[[3]](#footnote-3) For example, in *Sanchez v. United States*, the First Circuit considered both the mitigating factors for an untimely answer and the extent to which a party would be prejudiced by such late filing.[[4]](#footnote-4)

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.[[5]](#footnote-5) 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.”

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 STANDARD:**

1. *Parent’s Motion to Exclude is Denied.*

Parent is correct that the District’s Response to the June 30, 2023 Hearing Request was untimely.[[18]](#footnote-18) However, I cannot find that the one-day delay warrants removal of the Response from the record. In considering mitigating factors, I note that Attleboro received the Hearing Request and Notice of Hearing on June 30, 2023, the Friday before the holiday week. In addition, the delay in filing was minimal. More importantly, Parent has failed to suggest or demonstrate any prejudice as a result of the District’s late filing. Therefore, Parent’s *Motion* is hereby DENIED.

1. *Attleboro’s Request to Postpone the Automatic Hearing Date is Allowed.*

Here, as Attleboro has indicated that it would not waive the meeting nor have the parties yet agreed to use the mediation process in lieu of a resolution meeting, a resolution meeting is still required before a hearing can be held.[[19]](#footnote-19) The District has attempted to convene a resolution meeting[[20]](#footnote-20), satisfying its responsibility under the statute.[[21]](#footnote-21) Therefore, a resolution session must be held with both parties present before a due process hearing can take place unless there is an agreement to use the mediation process.[[22]](#footnote-22) Therefore, Attleboro’s request to postpone is ALLOWED.

**ORDER:**

Parent’s *Motion to Exclude* is DENIED. Attleboro’s *Request to Postpone* is ALLOWED.

Accordingly, the matter will proceed as follows:

1. The Hearing will take place via a virtual platformon September 26 and 27, 2023.   It will begin at 9:00AM.
2. Exhibits and witness lists are due at by the close of business day September 19, 2023.

**This extends the 45 day IDEA timeline and delays issuance of the Decision.**

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

July 27, 2023

1. Specifically, on July 5, 2023, via email, Parent’s Advocate indicated that “Parents have opted to waive the resolution meeting. If the district has an offer of settlement, kindly forward to me in writing.” During the conference call, Advocate asserted that Parents do not feel comfortable meeting with the District and would prefer a third party to be present when they meet with Attleboro. The District’s attorney agreed to inquire about whether the District would be amenable to mediation. [↑](#footnote-ref-1)
2. Mass. R. Civ. P. 8(b) and (c) and Mass. R. Civ. P. 12(a)(1). [↑](#footnote-ref-2)
3. Metro Funding, Corp. v. Vila Corp. (D.P.R. Apr. 6, 2010) (allowing motion to strike answer and entering a default judgment as sanction where Defendants repeatedly violated the Court's Orders and the rules of procedure). [↑](#footnote-ref-3)
4. See *Sanchez v. United States*, 781 F. Supp. 835, 838 (D.P.R. 1991), aff'd, 976 F.2d 724 (1st Cir. 1992) (finding that “the lack of mitigating factors and the extent of potential government prejudice … mandates the dismissal of Sánchez' claim for failure to file …”). [↑](#footnote-ref-4)
5. See *BSEA Hearing Rule* III (A); see also 34 C.F.R. §300.515. [↑](#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 BSEA Hearing Rule I (D). [↑](#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). [↑](#footnote-ref-20)
21. However, the District should 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-21)
22. 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-22)