**COMMONWEALTH OF MASSACHUSETTS**

Division of Administrative Law Appeals

**Bureau of Special Education Appeals**

**In Re:** North Attleboro Public Schoolsv. **BSEA #** 2400326

 Student

**Ruling on Parent’s Multiple Motions and Other Orders**

On July 14, 2023, North Attleboro Public Schools (District) filed a Hearing request seeking a finding from the BSEA that its IEP and proposed placement for the 2023-2024 school year are appropriate, and for determination of the relevant stay-put IEP. In her response to the Hearing Request, Parent denied the District’s claims, and within a period of 7 subsequent days has filed numerous motions, including a request for postponement, which requests/ motions are addressed below.

As background to the instant case, the District notes that Parent filed, and after intense litigation, on July 10, 2023, withdrew her Hearing Request in BSEA #2308812, which case incorporated the same issues as those presented in the instant matter. On July 12, 2023, the Hearing Officer in BSEA #2308812 issued a Notice of Acceptance of Withdrawal closing that matter, at Parent’s request, without prejudice. According to the District, Parent’s withdrawal came in the absence of a final settlement agreement between the Parties, and after the Parties expended considerable time, energy and funds in an alternative dispute process and litigation.[[1]](#footnote-1) At the core of Parent’s prior case, now closed, was a request for funding for an out-of-district placement for Student, among other claims.

The District asserts that Parent has kept Student at home for months and that she has thwarted the District’s efforts to place Student out of district, despite this having been her desire in BSEA #2308812. The District noted that Parent has been represented by three different attorneys over the past two years, but at present is proceeding pro-se. It was due to Parent’s pro-se-status at the end of her previous case that the Hearing Officer in that matter granted her leniency with respect to the untimely withdrawal. I note that Parent was the moving party in the previous case in contrast to this matter which has been initiated by the District. Because of the lengthy history between the Parties and the fact that Student has not been attending school, the District emphasizes its objection to the granting of any postponement of this Hearing.

The Parties participated in a conference call on Wednesday July 26, 2023, which, at Parent’s request, addressed only procedural and housekeeping matters in preparation for the Hearing, presently scheduled to proceed on Thursday, August 3, 2023. I note that during the telephone call the Parties were informed that I would take administrative notice of the orders and rulings entered by the Hearing Officer in the previous matter, involving the same Parties and issues.

On July 27, 2023, the District withdrew all the issues in its Hearing request except for the first issue involving BSEA determination of the appropriate out of district placement for Student. The same date, Parent objected to the District’s narrowing of the issues.

Parent’s and the District’s Motions are addressed below, upon consideration of the Parties’ arguments and relevant law, including the *Hearing Rules for Special Education Appeals* and the Formal Rules for Administrative Practice and Procedure.

1. **Parent’s Motion to Postpone the Hearing**: On July 25, 2023, Parent requested postponement of the Hearing, asserting that she was actively attempting to secure counsel. On July 25, 2023, the District emphatically opposed any postponement of the Hearing, arguing that

During the last hearing, the parent requested a postponement at 4PM on the day that exhibit and witness lists were due (after the District submitted everything to both the Hearing Officer and the Parent earlier that morning). Her postponement was granted against the strong objection of the District because the Parent stated she was seeking legal representation. She still has not obtained legal counsel, and the Student remains out of school without educational services. The parent has refused to send the Student to North Attleborough Public Schools, ESY, tutoring, and any out of district placements.

The Ruling on postponement of the Hearing is **STAYED** until 3:00 pm on Monday, July 31, 2023, so that the individual representing Parent may file an appearance. A telephone conference call is scheduled for 4:30 pm on Monday July 31, 2023, between Parent’s representative, the District’s attorney and this Hearing Officer. If Parent is not represented by counsel and no appearance is entered by a representative by 3:00 p.m., the call will not be held, Parent’s request for postponement will be denied, and the Hearing will proceed as scheduled

1. **Parent’s Motion for an Extension of Time to File Requests for Subpoenas**: On or about July 21, 2023, Parent requested additional time to submit subpoena requests to the BSEA. This request was **GRANTED** verbally, allowing an extension of the time for submission of said requests through the close of business on July 26, 2023. At the time of the July 26, 2023, conference call, the number of witnesses each side would be presenting was discussed and Parent was verbally told that given the limited issues before the BSEA she would be limited to a maximum of 5 witnesses, consistent with the Order issued in BSEA #2308812 by the previous Hearing Officer. (This number is further decreased to 4 later in this Ruling given the District’s withdrawal of all but one issue for Hearing). Parent was further told that she could only call one of three District witnesses in addition to the Special Education Director, who is the District’s sole witness. Parent disregarded the instructions of this Hearing Officer and continued to name approximately 9 witnesses, noting that she would only be requesting subpoenas for the District’s staff.

Parent did not request issuance of any subpoenas by the close of business on July 26, 2023. On July 27, 2023, she requested issuance of subpoenas to six District personnel.

The District twice objected to issuance of the subpoenas, first on July 24, 2023 and on July 27, 2023. The District also objected to Parent calling numerous District staff, noting that the request for subpoenas was late and exceeded the number of District individuals she had been allowed to list or call as witnesses at Hearing. The District further noted that the staff Parent had named/ listed had not worked with Student for more than a year and lacked relevant information regarding the present issues. Moreover, owing to the summer vacation schedules, the individuals sought by Parent may not be available.

I further note that Parent was specifically asked if she would require issuance of subpoenas for non-District witnesses and she responded that she would not, that they would attend voluntarily.

Parent’s request for issuance of 6 subpoenas to the District’s staff is **DENIED**. Parent is granted one last opportunity to list and call one District staff (other than Margaret Camire) as a witness from among the list she submitted, by 9:00 a.m. on Monday, July 31, 2023.

1. **Parent’s Motion to Dismiss**: On July 25, 2023, Parent filed a Motion to Dismiss. The Motion, in its entirety, consisted of the following language:

I am asking for the dismissal of claims which to my understanding have already been litigated, and are beyond the jurisdiction of the BSEA, or are barred by res judi-cata[sic] and collateral estoppel. In addition, because the District fails to allege any claims for relief, the Hearing Request should be dismissed for failure to state a claim upon which relief may be granted with respect to those claims.

In the context of this Motion to Dismiss I take as true the allegations of the complaint and draw all inferences as may be drawn from the complaint in the District’s favor. I note that to survive this motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief…”. See *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

Review of the District’s complaint in the light most favorable to the District shows that it contains sufficient factual allegations plausibly suggesting entitlement to the relief sought; that is, determination that an out-of-district public or private placement would offer FAPE to Student. Parent offered no settlement agreement or BSEA Decision supporting her contention that the claims herein have been fully adjudicated. Moreover, administrative review of BSEA #2308812, shows that the case was withdrawn/ closed without prejudice and the Parties were notified of their right to file a new hearing request with the BSEA on the same claims.

Parent’s Motion to Dismiss is **DENIED**.

1. **Parent’s Discovery Request**: On or about July 24, 2023, Parent filed a Discovery request seeking production of all “legal informal and formal data” in the possession of Rachel Silva (Reading specialist) and Maria Keil (Reading Specialist); and the contract and electronic correspondence between LearnWell Tutoring Services and Margret Camire, the District’s Special Education Director. The preceding data was requested for an unspecified period of time. Additionally, Parent requested the Student’s Record, inclusive of the disciplinary, bullying, attendance, and nurse’s records. Also requested were documents sent by the District to third parties such as the “non-binding referral packets”; CRA documents filed in Juvenile Court; all staff to staff email correspondence regarding Student from 2021 to the present time; and all email correspondence and phone records from Mrs. Camire to Learning Prep, Willow Hill and South Shore Collaborative

While the District objects to the granting of a postponement on the basis of discovery, at present, there are no disputes regarding discovery *per se* before me. Nevertheless, having reviewed Parent’s requests, I note that some requests appear to be overly broad, unduly burdensome, and not necessarily of the nature to lead to the discovery of admissible (relevant) evidence on the limited issue before me. I further note the District’s reliance on Rulings/Orders entered by the Hearing Officer in the previous BSEA case involving the same Parties and issue, cited *supra*,

Any dispute regarding discovery must be brought to the attention of the Hearing Officer by 3:00 p.m. on Monday, July 31, 2023.

1. **Parent’s Motion for a Public Hearing, Hybrid** **Model and for a Stenographer**: On or about July 27, 2023, Parent submitted a document dated July 25, 2023, requesting a public hearing, hybrid model and requesting that the BSEA provide a stenographer.

This issue was discussed during a telephone conference call on July 26, 2023, during which Parent was offered the option of a hearing via Zoom platform, but was adamant that she wished to have everyone, including her son, physically present in the hearing room. Parent further stated that Student’s pediatrician, therapist and neuropsychologist would be present and did not require a subpoena. The District preferred that the hearing be held remotely, objected to the hearing being public and expressed reservations about a live venue at the office of the BSEA. Thereafter, Parent submitted a request for a hybrid model so as to accommodate all parties.

The IDEA regulations at 34 CFR §300.512(c)(1), (2) and (3) grant parents the right to have the child who is the subject of the hearing present, to open the hearing to the public and to receive a transcription of the proceedings. Therefore, Parent’s Motions for a public hearing, for Student to attend the Hearing and for a Stenographer are **GRANTED**. However, Parent’s request for the Hearing to occur in hybrid form is **DENIED**.

At this time, the Hearing continues to be scheduled to proceed at 10:00 a.m., at the Offices of DALA/BSEA, 14 Summer St., 4th floor, Malden, MA, except that the determination regarding Parent’s request for postponement is deferred until Monday, July 31, 2023 (*supra*). Fire Department restrictions on the number of individuals that may be present in the hearing room will be strictly enforced. Those wishing to attend must be present in the hearing room at least five minutes before the start of the hearing. Additional guidelines will be issued prior to the date of hearing..

1. **District’s Withdrawal of Claims, Narrowing of Issues for Hearing and Parent’s Objection**: On July 27, 2023, the District withdrew all issues except the first issue in its Hearing Request, which the District more properly framed as a question. The District stated its intention to proceed on whether

…the most recently proposed IEP placing the Student in a private or public out of district placement provide the Student with a free appropriate public education?

Consistent with the District’s initial Hearing Request, it noted that it was

prepared to defend an appropriate placement at Willow Hill, Learning Prep, South Shore Educational Collaborative, or another similar approved day program.

Parent objected to the District’s withdrawal of the issue regarding stay-put, and also argued that since the District had changed the verbiage, it had amended its Hearing Request. Although not for the reasons so stated, Parent is technically, correct that the District amended the Hearing Request by streamlining the issues. This streamlining, however, results in a narrower issue for hearing, thus calling for less rather than more preparation time. Therefore, the District’s narrowing of the issues for hearing will not result in a recalculation of due process timelines, and the Hearing will proceed as scheduled on Thursday August 3, 2023, pending a determination on the postponement issue deferred until Monday, July 31, 2023, consistent with this Ruling.

I overrule Parent’s objection to the District’s withdrawal of the remaining issues. Parent retains the right to raise any or all of those claims should she choose to file a hearing request at a later date, consistent with the statute of limitations.

Given the very narrow issue before me at this time, and the fact that the case will be heard in one day, each Party will be permitted to present no more than 4 witnesses (in Parent’s case, this means that she may call up to three witnesses in addition to herself). The Parties shall have their questions for each witness, relevant to the limited issue before me, prepared in advance. Regarding submission of exhibits and witness lists, strict adherence to Rule VIII. A & B of the *Hearing Rules for Special Education Appeals* will be required, except that the Parties have agreed to exchange exhibit books and witness lists by the close of business on Friday July 28, 2023, with consent of the Hearing Officer.

Lastly, some additional matters warrant clarification.

Parent stated that she had faxed an 18-page document to the BSEA on or about July 25 or 26, 2023. The BSEA is not in receipt of any such fax from Parent.

Also, I note that in one of her numerous email communications to the BSEA since July 21, 2023, Parent noted her intention to file a request that counsel for the District be recused. While no such motion was ever formally filed, in light of the proximity of the Hearing, I note that I know of no legal theory, statute or regulation authorizing a BSEA Hearing Officer to take such action. Therefore, were Parent to file a motion in this regard, the same will be denied.

In closing I note that some of Parents numerous motions disregard the Hearing Officer’s instructions, and some are lacking in substance. It would appear that they are intended to unnecessarily delay the process and needlessly increase the cost of litigation for the District. The Parties are advised to use their time productively and efficiently at Hearing.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: July 28, 2023

1. “In the past two years, the Parent has had three special education attorneys represent her as well as multiple special education advocates. Attorney Marie Mercier, her most recent attorney, filed for hearing at the BSEA in the spring seeking an out of district placement. She specifically named Learning Prep School in her request. After an unsuccessful settlement conference on May 3, 2023, Attorney Mercier withdrew her representation. The District has since proposed the Learning Prep School via an IEP but the Parent has rejected that placement and impeded the referral process to obtain an acceptance at that school and others. To date she continues to refuse to allow the District to send packets to and correspond with any placements”. See District’s letter of July 25, 2023, objecting to Parent’s request for postponement. [↑](#footnote-ref-1)