**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In re: Student v. Wachusett Regional School District BSEA # 2405325**

**RULING ON**

**THE WACHUSETT REGIONAL SCHOOL DISTRICT’S OBJECTIONS TO PARENTS’ PROPOSED WITNESSES AND EXHIBITS**

This matter comes before the Hearing Officer on The Wachusett Regional School District’s Objections To Parents’ Proposed Witnesses And Exhibits (*Motion*) filed with the Bureau of Special Education Appeals (BSEA) by Wachusett Regional School District (the District) on April 7, 2025. In it, the District “objects to the calling of certain witnesses on the Parents’ witness list because they would not be expected to provide relevant testimony regarding the issues at hearing. The District also objects to the introduction of certain proposed exhibits by the Parents as not proper.” Also on April 7, 2025, Parents responded to the District’s *Motion*. (*Response*)

As neither party requested a hearing on the *Motion*, and, because neither testimony nor oral argument would advance the Hearing Officer's understanding of the issues involved, this Ruling is issued without hearing, pursuant to the Hearing Rules for Special Education Appeals (BSEA Hearing Rules), Rule VII(D).

For the reasons set forth below, the District’s *Motion* is ALLOWED, in part, and DENIED, in part.

**I. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY:**

The facts and procedural history in this matter have been recited in detail in numerous rulings in this matter. I note for the purpose of this Ruling that the hearing in this matter will address the following issues only:

1. Whether Parents were denied meaningful participation in the Individualized Education Program (IEP) process?
2. Whether the District failed to implement any accepted IEPs? And

3. Whether the IEPs developed and offered by the District for the 2021-2022 , 2022-2023, 2023-2024, and 2024-2025 school years were reasonably calculated to offer Student a FAPE in the LRE?

Specifically, Parents allege that the District failed to include their input in two District assessments and failed to provide Student with structured writing instruction, sufficient OT services, and AAC support.

**II. LEGAL STANDARDS AND DISCUSSION:**

a. Legal Standards:

BSEA Hearing Rules govern due process hearings at the BSEA. BSEA Hearing Rule IX(B) states that a Hearing Officer has a duty “to receive and consider all relevant and reliable evidence.” BSEA Hearing Rule IX(C) further states the “Hearing Officer shall not be bound by the rules of evidence applicable to courts, but shall observe the rules of privilege recognized by law. Evidence shall be admitted only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.”

b. Application of Legal Standards:

After reviewing the District’s *Motion*, and the Parents’ *Response* in light of the issues for hearing set forth above, I ALLOW, in part, and DENY, in part, the District’s *Motion*. I examine each objection separately.[[1]](#footnote-1)

The District objects to the calling of Shelly Rice, asserting that

“Ms. Rice was the Student’s first (1st) grade teacher during the 2018-2019 school year. The Student is currently in seventh (7th) grade. The issues identified by the hearing officer pertain to IEPs from the 2021-2022, 2022-2023, 2023-2024 and 2024-2025 school years and any testimony to be given by Ms. Rice would be too remote in time to provide testimony relevant to the issues at hearing.”

In response, Parents assert that

“The school district is mistaken about who Shelly is. She is not [Student’s] first-grade teacher. She knows [Student] personally and has seen her grow and learn over the past seven years. Shelly will talk about how kids like [Student] usually learn to write and how that didn’t happen the right way at school. She has reviewed [Student’s] IEPs and progress reports and will explain what kind of writing instruction was missing and how that caused [Student] to fall behind.”

Based on the legal standard above and the identified issues for hearing, I find that Ms. Rice may have relevant personal knowledge of Student and her disability-related needs. As such, her testimony may provide relevant information and is ALLOWED.

The District objected to the calling of Brianna McGovern (WRSD Occupational Therapist), asserting that

“her involvement with the Student is too remote in time to be relevant to the issues presented. The Student is currently in seventh (7th) grade. Ms. McGovern conducted an evaluation of the Student in October of 2020 when she was in third (3rd) grade and provided services to the Student shortly thereafter but has not provided services since the Student’s fourth (4th) grade year. Any testimony to be given by Ms. McGovern would be too remote in time to provide testimony relevant to the issues at the hearing.”

In response, Parents argue that Ms. McGovern

“tested [Student] in 2020, and the school used that test to help create the 2021 IEP, which is part of this hearing. Her recommendations were also used in later IEPs. She will talk about how the school reduced [Student]’s occupational therapy services and whether that decision made sense. She can also explain what services were recommended and what was actually provided. This helps show whether the school followed through on the plans they made.”

Based on the legal standard above and the identified issues for hearing, I find that Ms. McGovern may have relevant information to provide at Hearing. Parents are correct that her input into the 2021-2022 IEP makes her testimony in this matter relevant. As such, her testimony is ALLOWED.

The District further objects to the calling of Danae Allison (WRSD School Psychologist) on the grounds that she

“provided services too remote in time to be considered relevant to the issues at hearing. The Student is currently in seventh (7th) grade. Ms. Allison conducted a psychological evaluation of the Student in October of 2017 when she was in kindergarten, during the 2017-2018 school year. Ms. Allison has provided no direct services to the Student. For those reasons, any testimony to be given by Ms. Allison would be too remote in time to provide testimony relevant to the issues at hearing.”

Parents did not respond to this objection.

I agree with the District that Ms. Allison’s testimony would not be relevant to this matter. The first IEP at issue is dated November 24, 2020 to November 23, 2021. Ms. Allison’s knowledge of Student is too remote in time to provide testimony relevant to the issues at hearing. Therefore, Ms. Allison’s testimony will be EXCLUDED.

Via email dated April 7, 2025, the District noted that it “reserve[s] the right to object to [Joseph Pinto] once I learn what his involvement with the Student is.” Parents responded that Mr. Pinto “is a family friend who has known [Student] since birth. He visits the family once a week and can talk about the changes he has seen in her over time, including her regression.”

Based on the legal standard above and the identified issues for Hearing, I find that Mr. Pinto may have personal knowledge of Student and her disability-related needs and, as such, may provide relevant information at Hearing. As such, Mr. Pinto’s testimony is ALLOWED.

The District also objected to Parents’ proposed exhibits labeled R-01, R-02, R-03 and R-04,secondary source material written by authors who would not be available for cross-examination, and by authors who have no actual involvement with the Student. Parents argued that “These articles show what kinds of teaching methods work best for students like [Student]. They help support our concerns about how the school handled her education, especially since the district didn’t allow outside evaluations in those areas.”

While the articles provided by Parents may be reputable and peer-reviewed, and may offer useful background information or insight, these articles do not address Student’s specific circumstances and profile. In the context of evaluating the reliability of R-01, R-02, R-03 and R-04, I must consider whether the articles’ general findings can be reasonably extrapolated to Student’s unique situation, and find that without a direct connection between the articles' content and Student's educational profile and her history of disability-related needs, and without an expert to testify regarding same, the articles lose their potential relevance. As such, R-01, R-02, R-03 and R-04 are EXCLUDED.

The District further argues that “proposed exhibits BSEA-01, BSEA-02 and BSEA-03 are prior BSEA case decisions that are not specific to the Student. To the extent the rulings in the cited cases apply to the Parents’ legal argument, the Parents are free to include them in their oral or written closing argument after the close of evidence, but the prior BSEA rulings should be excluded and not entered into the record as actual exhibits.”

Parents respond that they “are not saying these decisions are binding, but they help show how other similar cases have been handled. One relates to expert credibility, which is relevant because of Dr. Robbins. We also plan to reference these cases during our questions for Dr. Robbins. We understand that BSEA decisions have been submitted in hearings before.”

I agree with the District that the BSEA rulings should be excluded from evidence as they have no bearing on the issues at hand. However, should Parents wish to ask Dr. Robbins about his prior involvement in BSEA cases for the purpose of impeaching his credibility, such questioning may be allowed. As such, BSEA-01, BSEA-02 and BSEA-03 are EXCLUDED from the record, but may properly be included in Parents’ closing argument.

**III. ORDER:**

The District’s *Motion* is ALLOWED, in part, and DENIED, in part accordingly:

The testimony of Ms. Rice, Ms. McGovern and Mr. Pinto will be ALLOWED. The testimony of Ms. Allison will be EXCLUDED. R-01, R-02, R-03 and R-04 and BSEA-01, BSEA-02 and BSEA-03 will be EXCLUDED from evidence. The resubmitted versions of I-01 and LG-02 will be ADMITTED into the record.

So Ordered,

/s/ Alina Kantor Nir

Alina Kantor Nir

Date: April 8, 2025

1. The District also objected to the inclusion of LG-01, LG-02, I-02.in the record. Parents withdrew LG-01 and thus it need not be addressed in this Ruling. They also withdrew LG-02 and I-02 and provided amended versions thereof. The District has no objections to the resubmitted documents. As such LG-02 and I-02 are ADMITTED. . [↑](#footnote-ref-1)