**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**:  **Student v. Fitchburg Public Schools**  **BSEA #2409889**

**RULING ON DISTRICT’S OBJECTION TO ACCELERATED STATUS**

This matter comes before the Hearing Officer on the *Objection to Guardian’s[[1]](#footnote-1) Request for Accelerated Status* (*Objection*) filed by Fitchburg Public Schools (Fitchburg or the District) on March 20, 2024.

In the *Hearing* *Request* filed on March 19, 2024, Guardian asserts that Student, who is 13 years old and has an individual education program (IEP) with placement in a substantially separate classroom, requires an out-of-district placement, as his current placement does not provide him with a free, appropriate public education (FAPE) and has endangered his health and safety.

According to the *Hearing Request*,[[2]](#footnote-2)Student’s diagnoses include Cerebral Palsy, Cortical Visual Impairment, autism spectrum disorder with severe intellectual disability, seizure disorder, a communication disorder, eosinophilic esophagitis, and central hypothyroidism. He wears pull-ups and is unable to use the bathroom without assistance or notify caretakers when he needs to use the bathroom. He wears braces on his legs that are attached to his hips by cable wires. He can walk, often with assistance, but when overly fatigued, unsteady, or exhibiting unsafe behaviors he utilizes a wheelchair. Student began attending the in-district Longsjo Middle School on November 21, 2023. Guardian contends that the District has consistently denied requests for increased safety procedures related to his documented seizure disorder and failed to implement protocols related to Student’s need for supported toileting, an issue that undermines his dignity and health.

According to Guardian, since Student began attending Longsjo Middle School, he has had to work in a separate office on one occasion due to a broken elevator; on several days, Student’s pull-up was not proactively checked or changed at all, potentially impacting his skin health; on one day, Student returned home with broken leg braces and red marks on his back, presumably from too much sitting, despite his nutritionist’s recommendation (shared with the school) that he ambulate to assist his stooling patterns, appetite, and weight gain, as well as his bone health; and Student does not appear to be adequately supervised by his 1:1 aide. Most importantly, earlier this month, Guardian received an inaccurate verbal report by telephone of symptomatic episodes Student experienced in school, leading her to keep him at school that day, whereby he had a seizure within two hours. An hour later, when Guardian arrived at school to show staff what Student’s seizures look like, she reviewed written reports that described the earlier episode as a seizure, which was not what she had been told. Guardian took Student home from school, concerned that he was not safe there. A week later, Student exhibited twitching movements, requiring Guardian to pick him up from school, at which time he was in his wheelchair. It is unclear whether the individuals working with Student had access to his seizure protocol and/or seizure action plan at the relevant times.

On March 20, 2024, the matter was granted accelerated status pursuant to BSEA Hearing Rule II(D) and the Hearing was scheduled for April 19, 2024, with a decision due on May 6, 2024.

In its *Objection*, Fitchburg argues that Guardian has not sufficiently pled that any of the situations outlined in BSEA Hearing Rule II(D) has been met.

For the reasons below, the District’s *Objection to Guardian’s Request for Accelerated Status* is denied.

**LEGAL STANDARD FOR ACCELERATED STATUS:**

According to BSEA Hearing Rule II(D), hearings may be assigned accelerated status in the following situations:

“a. When the health or safety of the student or others would be endangered by the delay; or

b. When the special education services the student is currently receiving are sufficiently inadequate such that harm to the student is likely; or

c. When the student is currently without an available educational program or the student’s program will be terminated or interrupted immediately.”

Where only some, but not all, issues in a *Hearing Request* meet the criteria above, the matter may be bifurcated such that only those issues proceed on an accelerated track, with remaining issues proceeding separately.[[3]](#footnote-3) Furthermore, the non-moving party may challenge the grant of accelerated status under section (4)(b) of BSEA Hearing Rule II(D), which allows, “[a]t the written request of the party(ies), or upon the Hearing Officer’s determination, an accelerated matter [to] be removed from the accelerated calendar, and [to] proceed in accordance with the timelines set forth in federal and state law.”

**APPLICATION OF LEGAL STANDARD:**

The District asserts that Guardian has not sufficiently pled facts that support the assignment of accelerated status under (a), (b), or (c). I disagree. Guardian has alleged inaccurate reporting to Guardian of Student’s symptoms, which could be seizure-related; insufficient checking and changing of Student’s pull-ups; insufficient opportunities to for him to ambulate; and insufficient supervision. If true, and if these types of incidents continue, delaying the Hearing may well endanger Student’s health or safety, as well as his dignity. Because it is limited to the issue of Student’s placement, the entire *Hearing Request* remains on the accelerated track.

For these reasons, the District’s *Objection to Guardian’s Request for Accelerated Status* is DENIED.

**ORDER:**

This matter remains on the accelerated track, and, accordingly it will proceed as follows:

1. A Conference Call will take place at 4:00 PM on April 8, 2024.
2. The Hearing will take place on April 19, 2024. Please note that no postponements will be permitted unless the moving party requests that the matter be removed from the accelerated track.[[4]](#footnote-4)
3. Exhibits and witness lists are due by the close of business on April 12, 2024.

By the Hearing Officer,

/s/ Amy Reichbach

Amy Reichbach

Dated: March 26, 2024

1. Although the District filed its letter to object to Parent’s request for accelerated status, the *Hearing Request* was filed by Student’s Guardian. I refer to her as such throughout this Ruling. [↑](#footnote-ref-1)
2. For purposes of the present Ruling, I take as true the allegations in the *Hearing Request*, given that I must determine only whether Guardian has adequately alleged facts that warrant accelerated status. [↑](#footnote-ref-2)
3. BSEA Hearing Rule II (D)(3)(a). [↑](#footnote-ref-3)
4. See BSEA Hearing Rule II(D)(4). [↑](#footnote-ref-4)