**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Old Colony Regional Vocational

Technical High School BSEA No. 2508424

v.

Student

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**RULING ON PARENTS’ MOTION TO EXCLUDE ANY EVIDENCE AT THE HEARING THAT HAS NOT BEEN DISCLOSED TO THE PARTIES AT LEAST FIVE (5) BUSINESS DAYS BEFORE THE HEARING**

**AND**

**PARENTS’ MOTION TO DISMISS**

This matter comes before the undersigned Hearing Officer on *Parents’ Motion To Exclude Any Evidence At The Hearing That Has Not Been Disclosed To The Parties At Least Five (5) Business Days Before The Hearing* (*Motion to Exclude*) and on *Parents’* *Motion for Dismiss*, both filed against Old Colony Regional Vocational Technical High School (Old Colony or the District) on April 28, 2025 (together, the *Motions*).

Parents requested to be heard on the *Motions*, and such opportunity was provided on May 30, 2025.

For the reasons articulated below, Parents’ *Motions* are DENIED.

**PROCEDURAL BACKGROUND:**

On February 13, 2025, Old Colony filed a *Request for Hearing* with the Bureau of Special Education Appeals (BSEA) seeking substituted consent for a three-year re-evaluation of Student. The matter was assigned to Hearing Officer Sara Berman and scheduled for hearing on March 5, 2025. Parents filed a Response on March 6, 2025, in which they objected to the request for substituted consent, agreed to the triennial evaluation, requested a comprehensive psychological assessment in Student’s areas of disability, and requested postponement of testing until September 2025 due to concerns that earlier testing would adversely affect Student’s emotional well-being. On March 12, 2025, a pre-hearing conference was held at which the parties agreed to postpone testing until September 2025. Upon the parties’ request, the hearing was further postponed for good cause until May 29 and 30, 2025.

Exhibits and witness lists were due to be received by the Hearing Officer and the opposing party by the close of business day on May 22, 2025. Parents did not submit a witness list or any exhibits. The District sent out its witness list and exhibits on May 21, 2025, but Parents did not receive the exhibits and witness lists until May 23, 2025.

On May 27, 2025, Hearing Office Berman indicated via email that Parents would be barred from presenting witnesses or evidence for failure to comply with the 5-day rule. On May 28, 2025, she informed the parties that due to the one-day delay in Parents’ receiving the District’s exhibits and witness lists, the Hearing would begin on the second day of hearing, May 30, 2025.

On May 28, 2025, Parents filed *Parents’ Motion To Exclude Any Evidence At The Hearing That Has Not Been Disclosed To The Parties At Least Five (5) Business Days Before The Hearing*. In it, they asserted that

“The district provided the hearing officer with its exhibits and witness list via electronic means; however, it failed to provide the parents with the same until Friday, May 23, 2025, less than five days before the hearing, in violation of Rule VIII. The parents were NOT provided access to the electronic document drop box. According to BSEA Rule X(A)(6), and Hearing Officer Berman’s [] ruling at 3:47 pm, on May 27, 2025 [barring Parents from presenting exhibits or witnesses at Hearing], the parent now requests that the district exhibit, witness list, and witnesses be excluded.”[[1]](#footnote-1)

Also on May 28, 2025, Parents filed a *Motion to Dismiss*, asserting that since the District failed to comply with the 5-day rule, and Hearing Officer Berman has barred Parents from introducing exhibits or witnesses due to their failure to submit same, the hearing should be dismissed.

Also on May 28, 2025, the matter was reassigned to Hearing Officer Alina Kantor Nir for administrative reasons.

On May 30, 2025, Parents presented their argument to the Hearing Officer on the *Motions*.

**LEGAL FRAMEWORK AND DISCUSSION:**

1. Motion to Exclude

Pursuant to BSEA Hearing Rule VIII(A), “copies of all documents to be introduced (exhibits) and a list of the witnesses to be called at the hearing must be received by the opposing party(ies) and the Hearing Officer at least five (5) business days prior to the hearing unless otherwise allowed by the Hearing Officer.” In the present matter, the Hearing was scheduled to commence on May 29, 2025. Accordingly, pursuant to the Rule, all exhibits and witness lists were required to be received by the parties and the Hearing Officer no later than the close of business on May 22, 2025.

The record reflects that Parents failed to submit any exhibits or witness list by the May 22, 2025 deadline, or at any time thereafter. The District did submit its required disclosures[[2]](#footnote-2), but the documents and witness list were not received by Parents until May 23, 2025, one business day beyond the prescribed deadline.

In response to the District’s untimely disclosure, Hearing Officer Berman, in the exercise of her discretion, modified the hearing schedule such that the proceedings would commence on the second scheduled day of hearing, May 30, 2025, rather than on May 29, 2025. This modification was explicitly intended to afford Parents the full five (5) business days to review the District’s disclosures and to prepare accordingly.

Given that the procedural accommodation already afforded to Parents sufficiently remedied the District’s one-day delay, and in light of Parents’ own failure to comply with disclosure requirements, the *Motion to Exclude* the District’s evidence is **DENIED**.

1. Motion to Dismiss

Pursuant to Rule XVII A and B of the Hearing Rules and 801 CMR 1.01(7)(g)(3)[[3]](#footnote-3), a hearing officer may allow a motion to dismiss if the party requesting the hearing fails to state a claim upon which relief can be granted. These rules are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As such, hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim. To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”[[4]](#footnote-4) The hearing officer must take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff’s favor.”[[5]](#footnote-5) These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”[[6]](#footnote-6)

Here, Parents have failed to assert any legal basis for dismissal that would justify the extraordinary remedy they seek. Their *Motion* rests solely on the claim that they were prejudiced by the District’s one-day delay in serving its witness list and exhibits. This argument is unavailing. Hearing Officer Berman has already addressed this procedural irregularity by continuing the start of the hearing to May 30, 2025, thereby curing any potential prejudice to Parents. In addition, Parents’ failure to submit any exhibits or witness list, despite having had the opportunity to do so even after receiving the District’s materials, was a voluntary choice, described by Parents themselves as based on their own “tactical decision[s].”[[7]](#footnote-7) Moreover, the standard for dismissal requires that the complaint fail to state a claim upon which relief can be granted or be otherwise legally insufficient. In this case, the factual allegations in the underlying complaint “raise a right to relief above the speculative level.”[[8]](#footnote-8) Therefore, Parents’ *Motion to Dismiss* is **DENIED**.

**ORDER:**

Parents’ *Motions* are hereby DENIED.

By the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir

Date: June 1, 2025

1. Parents stated that they had

   “made the tactical decision NOT to advise the district of the approaching deadlines, and not pester the district for the witness list and exhibits. When the parents received Nadia Valme’s email on May 21, 2025, at 4:05 p.m., the parents did not believe the district would meet the 5:00 p.m., United States Postal Service (USPS) deadline for overnight mail. The United Parcel Service (UPS) tracking data indicates the parents were correct.

   The parents made a further tactical decision to run out the clock and see if the district would comply with their obligations under the five-day rule, before the parents had to disclose their hearing strategy and personal information of [Student]. Parents were fully prepared to have emailed their exhibits and witness list to the district and the hearing officer, as well as to have hard copies hand-delivered before the close of business on May 22, 2025.

   When the USPS delivered the parents’ mail on May 22, 2025, the district’s package was not included in the mail. The parents made a further tactical decision not to file the discussed motion to postpone the hearing or a motion to extend the filing deadline, as both of these would effectively reset the five-day rule for both parties.” [↑](#footnote-ref-1)
2. It seems that the documents were sent out on May 21, 2025. [↑](#footnote-ref-2)
3. 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. [↑](#footnote-ref-3)
4. *Iannocchino v. Ford Motor Co.,* 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). [↑](#footnote-ref-4)
5. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-5)
6. *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). [↑](#footnote-ref-6)
7. Nor was Parents’ argument that they had not received discovery from the District persuasive. hey had ample time to raise any discovery-related concerns before the May 22, 2025 deadline for submitting exhibits and witness lists. If they needed a ruling on the District’s discovery objections to file their exhibits on time, they could have requested one from Hearing Officer Berman at any point. Instead, they had a prepared exhibit binder ready for timely submission but chose to wait and see whether the District submitted its materials on time. [↑](#footnote-ref-7)
8. *Twombly*, 550 U.S. at 555. [↑](#footnote-ref-8)