**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In Re: Student v. Belmont Public Schools BSEA # 2509536

**CORRECTED RULING ON PARENTS’ MOTION FOR SUMMARY JUDGMENT[[1]](#footnote-1)**

This matter comes before the Hearing Officer on the *Motion For Summary Judgment* (*Motion*) filed by Parents[[2]](#footnote-2) on March 20, 2025.

On March 3, 2025, Parents filed a *Hearing Request* against Belmont Public Schools (Belmont or the District), alleging that the District had violated the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and state special education laws. Specifically, Parents allege that Belmont: (1) conducted an improper initial eligibility determination regarding Student in January and February 2024 by using “a very limited set of assessments to address the parents’ concerns,” thereby failing to identify Student’s disability; (2) failed to reconvene an Individual Education Program (IEP) Team meeting within the required timeframe after receiving an Independent Education Evaluation (IEE) that diagnosed Student with anxiety and a Specific Learning Disability (SLD) in Reading, instead implementing an Individual Curriculum Accommodation Plan (ICAP); (3) prevented a timely determination of disability by (a) improperly redirecting Parents through the 504 process rather than reconvening the IEP Team, delaying the 504 eligibility meeting, and improperly determining at that meeting that Student does not have a disability; (b) “ignoring [P]arent[s’] right to waive assessments and administering unnecessary testing,” in violation of 603 CMR 28.07(2); and (c) referring Parents to a publicly funded IEE rather than complying with their request for an in-district GORT-5 assessment, then proposing yet another meeting to discuss the GORT-5 data, rather than reviewing it in an already-scheduled meeting. As relief, Parents requested a written decision in their favor on the issues outlined above; an Order that the District update its protocol regarding the 10-day response mandate under 603 CMR 28.04(5)(f); an Order that the District provide a formal Section 504 plan for Student; an Order for Tier 2 reading comprehension services; reimbursement for fees spent on advocates and attorneys and for tuition spent on Lindamood-Bell instruction in the summer of 2024; and a formal written apology from Belmont. Parents requested that the hearing be assigned accelerated status.

Accelerated status was denied, and the Hearing was scheduled for April 7, 2025.

On March 12, 2025, Belmont filed its *Response to Parents’ Hearing Request*. According to the District, Student was correctly found not eligible for special education services because he is able to access the general education curriculum and make effective educational progress. Without accommodations, modifications, or related services, Student performs well in all grade-level courses (earning As and Bs on school assignments), demonstrates high social skills functioning, and largely exhibits age-appropriate emotional, attentional, and executive functioning skills. Belmont contends that some of the relief sought by Parents, specifically Parents’ request that the District be ordered to change its policies and provide an apology, be dismissed as a matter of law as the Bureau of Special Education Appeals (BSEA) may not grant such relief. The District further asserts that Parents’ request for specific GORT-5 testing be dismissed as moot, as Belmont has already agreed to perform the GORT-5, which will be reviewed at an upcoming eligibility Team meeting in early May 2025.

Following a Conference Call on March 20, 2025, the District filed a request to postpone the Hearing until May 16 and 19, 2025 to permit the parties to work together to resolve the issues underlying the *Hearing Request*, particularly as Belmont was in the process of scheduling an IEP eligibility meeting in connection with new testing scheduled for April. On March 24, 2025, Parents filed an *Opposition*, accompanied by several documents labeled “Exhibits;” however, they agreed to a postponement until April 18, 2025. On April 1, 2025, the undersigned Hearing Officer allowed Belmont’s postponement request for good cause, and the Hearing was scheduled for May 16 and 19, 2025, with a Pre-Hearing Conference tentatively scheduled for April 29, 2025.

Also on March 20, 2025, Parents filed the instant *Motion for a Partial Summary Judgment of Whether Belmont has Violated 603 C.M.R. 28.04(5)(f) and an Order to Reconvene IEP Meeting by April 2, 2025 (Motion for Partial Summary Judgment)*.[[3]](#footnote-3) They assert that Belmont received an IEE diagnosing Student with a SLD in Reading on May 31, 2024, and that as of March 20, 2025, the District has yet to hold a meeting to discuss the IEE. Parents request, as relief, that Belmont be found in violation of 603 CMR 28.04(5)(f) and be ordered to reconvene an IEP meeting by April 2, 2025 that includes a review of all up-to-date assessment data, including in-district GORT-5 results from March 27, 2025 and the most recent educational progress data, and entails completion of all required Massachusetts SLD forms. In support of their *Motion for Partial Summary Judgment*, Parents provided three exhibits: Belmont’s initial IEP eligibility decision documented on February 15, 2024 (P-1); a neuropsychological report written by Achieve New England (Achieve) (P-2); and email correspondence between Parents and the District (P-3).

On March 26, 2025, Belmont submitted its *Opposition* to Parents’ *Motion for Partial Summary Judgment*, asserting that genuine issues of material fact preclude summary judgment and that the relief requested by Parents may not be ordered by the BSEA. Specifically, the District argues that in accordance with emails exchanged between the parties, Parents submitted Student’s neuropsychological report for purposes of eligibility for a 504 plan, not for purposes of eligibility for an IEP. As such, the report is not subject to the requirements of 603 CMR 20.04(5)(f), including the requirement that a Team meet to discuss an IEE within 10 days of receiving it. In support of its *Opposition,* Belmont submitted three exhibits labeled I-L, all of which consist of emails between Parents and District personnel.

On March 28, 2025, Parents filed a document entitled *Objection to Belmont Public Schools’ Opposition to Parent’s* [*sic*] *Motion for Summary Judgment*.[[4]](#footnote-4) They assert that there is no genuine dispute of material facts regarding their submission of the Achieve report on May 31, 2024 and the District’s failure to reconvene a Team meeting by June 14, 2024; that it is irrelevant whether the report was submitted for 504 eligibility and that even if it were relevant, Parents never explicitly requested a 504 meeting, and, either way, the District was still required to hold a follow-up to the initial IEP meeting within 10 days of receiving the Achieve report to reassess eligibility; and that a student cannot be approved for a 504 plan without first confirming disability status through an IEP meeting, such that neither Belmont nor Parents can decide which plan Student qualifies for without reconvening for an IEP meeting. Parents contend that the emails submitted by Belmont pertaining to October 2, 2024 are irrelevant and should not be considered. Parents requested that the BSEA dismiss Belmont’s *Opposition* and rule that the District violated 603 CMR 28.04(5)(f) by failing to reconvene the IEP meeting within the mandated 10-day timeframe.

For the reasons set forth below, Parents’ *Motion* is DENIED.

**FACTUAL BACKGROUND**

The following facts are derived from the pleadings and exhibits submitted by the parties. Where a factual dispute exists, I construe it in favor of the District, as the party opposing summary judgment.[[5]](#footnote-5)

1. Student is 14 years old. He was enrolled in eighth grade within Belmont during the 2023-2024 school year. (P-1)
2. Belmont conducted an Initial Evaluation of Student and, on February 9, 2024, convened a Team meeting to discuss that evaluation. The Team determined that Student is not eligible for special education services, as he does not have a disability. (P-1)
3. Parents obtained an Integrated Neuropsychological and Educational Evaluation of Student from Achieve. Testing was conducted on April 26, 2024, and a report was generated on May 29, 2024. (P-2)
4. On May 22, 2024, Parents emailed Belmont personnel to inform them that Achieve had conducted a full neuropsychological assessment of Student, that he had been diagnosed with a SLD in Reading Comprehension and Academic Fluency/Processing Speed and Other Specified Anxiety Disorder, and that the doctors believed he “required the initiation of a 504 plan to accommodate his general classroom education and possibly other services in reading and speech/language therapies.” Parents requested an IEP meeting “to rediscuss [Student]’s condition.” (P-3; S-J)
5. On May 23, 2024, Belmont Middle School (BMS) school psychologist Brittany Spengler responded, explaining that following through on the doctor’s request to consider Student for a 504 plan, which is a general education initiative handled by school counselors, would not require convening the IEP Team. Ms. Spengler asked whether Parents could confirm that they were, in fact, requesting a meeting for 504 eligibility. (P-3; S-J)
6. On May 28, 2024, Parents wrote, “the IEP/504 process is new to us,” and asked for a brief meeting “to learn about the options of IEP/504 before we decide which route to go for and request a formal meeti[]ng.” Parents continued, “As it is close to the end of the semester, we see there is a 10-day response rule for the IEP meeting . . . [h]ow about a 504 meeting? Can we get a decision of the accommodations or services by the end of the semester?” (P-3; S-J)
7. Ms. Spengler responded on the same day, asking whether Parents had the full neuropsychological report available and suggesting that Belmont and Parents review the report together “before moving forward on the 504/IEP process.” Ms. Spengler mentioned inviting the speech language pathologist to attend the meeting as well, to “get a better idea of what the next steps should be at school.” (P-3; S-J)
8. Mother responded the following day, on May 29, 2024, asking that a meeting be scheduled to discuss next steps and agreeing that the speech language pathologist be invited. Mother sent a summary of the report and stated, “I still want to schedule the formal meeting before the school year ends as it is still within the 10 school days guideline.” (P-3; S-J)
9. Mother emailed Belmont the completed neuropsychological report on May 31, 2024. In the email accompanying the report, Mother wrote, “I just learned that there are a lot of details to consider for an IEP, and we probably don’t have time to do it near the end of the semester. Therefore, we would like to apply for a 504 plan for [Student] to see how it goes first.” Mother requested an “informal meeting” to learn about the IEP process and also asked to be advised on the next step regarding an application for a 504 plan. (P-3; S-I)
10. Ms. Spengler responded, “looping in” Student’s school counselor Robyn Cohen “as she is in charge of 504 plans,” and noting that there would not be time before the end of the school year to meet regarding a 504 plan. Ms. Spengler suggested that Parents connect with high school staff, as eighth grade was coming to an end and high school staff would have “clearer insight into what they can offer in a 504 plan to support” Student. (P-3; S-I)
11. On June 3, 2024, Parents emailed Ms. Spengler and Ms. Cohen, stating that it would be a good idea to connect with high school stuff and also noting that school counselors “should have some time between now and the end of the semester to meet with [them] to consider [Student]’s case.” (P-3)
12. On June 10, 2024, Ms. Cohen responded with the name of Student’s high school counselor and explained that the counselor should be able to meet with Parents either early in the fall or at the end of the summer to discuss a plan for Student. Mother responded, thanking Ms. Cohen for the information and stating that she would contact the high school counselor. (P-3)
13. In the meantime, on June 4, 2024, Parents emailed the school psychologist at Belmont High School (BHS) about their concerns, attaching Student’s spring grades and MCAS report, school evaluations, and the Achieve neuropsychological evaluation. BHS’s school psychologist responded that upon reviewing the information, she believed an ICAP would be appropriate for Student and mentioned that a 504 plan could be written if he struggled to make academic or social/emotional progress in ninth grade. Parents emailed that they still wanted to pursue “at least a 504,” and also wanted to know what special education services the high school had for support. They requested an “official meeting” to discuss it. Parents then emailed again, stating that BMS had received the Achieve report they referred to as an IEE on May 31, 2024 and the high school received it on June 4, 2024, and that therefore an IEP meeting should take place by June 14, 2024. (P-3)
14. On September 26, 2024, Parents contacted Belmont Director of Student Services Ken Kramer, sending information from their advocate regarding IEEs, ICAPs, the ADA, and grades, and asking for updates. Mr. Kramer responded, writing that because Student does not have a disability that impacts him in school, he would not qualify for an IEP or a 504 plan; suggesting that the high school could do a formal 504 evaluation to “look into this further”; and explaining that because Student is not on an IEP, there is no “Team” to convene to discuss the Achieve report, and therefore the IDEA’s mandates regarding IEEs do not apply. (P-3)
15. Parents responded on September 27, 2024, attaching information regarding IEEs. (S-K)
16. On October 2, 2024, Mr. Kramer wrote to Parents, asking them to clarify whether they were requesting an evaluation for a 504 plan or an IEP. Parents responded that they were requesting a 504 plan. (S-K, S-L)

**DISCUSSION**

To determine whether summary judgment may be granted in this matter, I apply the summary judgment standard to the relevant procedural and substantive law.

1. Legal Standards
2. *Legal Standard for Summary Judgment*

Pursuant to 801 CMR 1.01(7)(h), summary decision may be granted when there is “no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law.”[[6]](#footnote-6) In determining whether to grant summary judgment, BSEA hearing officers are guided by Rule 56 of the Federal and Massachusetts Rules of Civil Procedure, which provide that summary judgment may be granted only if the “pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law.”[[7]](#footnote-7) “A genuine dispute as to a material fact exists if a fact that ‘carries with it the potential to affect the outcome of the suit’ is disputed such that ‘a reasonable [fact-finder] could resolve the point in the favor of the non-moving party.’”[[8]](#footnote-8) Whether a fact is material depends on the applicable substantive law.[[9]](#footnote-9) “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”[[10]](#footnote-10)

The moving party bears the burden of proof on this motion, and all evidence and inferences must be viewed in the light most favorable to the party opposing summary judgment.[[11]](#footnote-11) This means that the fact-finder must assess evidence in a way that gives the benefit of the doubt to the non-moving party.

In response to a motion for summary judgment, the opposing party “must set forth specific facts showing that there is a genuine issue for trial.”[[12]](#footnote-12) This means that the adverse party must show that a finder of fact (in BSEA cases, a hearing officer) must hear the case because the facts in dispute are genuine – in other words, they may “reasonably be resolved in favor of either party.”[[13]](#footnote-13) This requires “sufficient evidence” in favor of the party opposing summary judgment.[[14]](#footnote-14) Moreover, if the evidence the non-moving party brings forth in its efforts to create a genuine dispute of material fact is comprised of “conclusory allegations, improbable inferences, and unsupported speculation,”[[15]](#footnote-15) or if it is “merely colorable, or is not significantly probative, summary judgment may be granted.”[[16]](#footnote-16)

As such, to analyze whether the party moving for summary judgment has met its initial burden such that the burden shifts to the opposing party, I must view all of the evidence it has submitted in the light most favorable to the opposing party and determine that there is no genuine issue of material fact related to the moving party’s claims. Only if the moving party is successful in this first step does the burden then shift to the opposing party to demonstrate, by use of specific facts, that there is actually a genuine dispute of material fact precluding summary judgment because a fact-finder might reasonably resolve the issue in its favor.

1. *Independent Educational Evaluations Pursuant to 603 CMR 28.04(5)(f)*

In Massachusetts, independent educational evaluations are governed by 603 CMR 28.04(5), which provides that “upon receipt of evaluation results, if a parent disagrees with an initial evaluation or reevaluation completed by the school district, then the parent may request an independent education evaluation.”[[17]](#footnote-17) Although much of the regulation describes the process for obtaining an IEE at public expense, Parents may obtain one at private expense at any time.[[18]](#footnote-18) Pursuant to 603 CMR 28.04(5)(f), within ten school days from a school district’s receipt of an independent education evaluation report, “the Team shall reconvene and consider the independent education evaluation and whether a new or amended IEP is appropriate.” The regulation does not define what constitutes an IEE, though it does establish parameters around who may conduct one and the rates that may be paid.[[19]](#footnote-19)

1. *Procedural Violations*

A school district’s failure to reconvene a timely Team meeting following

submission of an IEE would be considered a procedural violation. Under the IDEA, procedural errors may amount to a deprivation of the right to a free appropriate public education (FAPE) if “the procedural inadequacies – (I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or (III) caused a deprivation of educational benefits.”[[20]](#footnote-20) Under this standard, not all procedural errors automatically entitle a parent or disabled child to relief; some procedural errors may not result in any substantive harm.[[21]](#footnote-21)

1. Application of Legal Standards

I apply these standards, incorporating by reference the findings above to avoid needless repetition.

Parents seek summary judgment on their claim that Belmont violated 603 CMR 28.04(5)(f) by failing to convene a Team within 10 school days to consider the Achieve neuropsychological evaluation of Student they provided to the District on May 31, 2024. Parents have, in fact, established that they provided the report to Belmont and that Belmont did not hold a Team meeting within 10 school days. Whether the District violated 603 CMR 28.04(5)(f), however, turns on whether the regulation applies in the circumstances of this case. The evidence before me demonstrates confusion regarding the purpose for which Parents submitted Student’s Achieve neuropsychological evaluation. If Parents were seeking to have Belmont review the report to determine whether Student qualified for a 504 plan, rather than challenging the underlying evaluations performed by Belmont at the time Student was found ineligible for special education, it is not clear that the submission of the report triggers the provisions of 603 CMR 28.04(5)(f). Moreover, even if such provisions were triggered, Parents are entitled to relief on this claim only if the District’s failure to convene the meeting impeded Student’s right to a FAPE, significantly impeded Parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to Student; or caused a deprivation of educational benefits.[[22]](#footnote-22)

Whether the District should have treated the Achieve neuropsychological report as an IEE and convened a Team meeting within 10 school days of May 31, 2024 and, if so, whether the failure to do so violated Student’s right to a FAPE, are both open questions. The answers to these questions will determine whether Parents have a right to relief. As such, Parents have not established the absence of genuine issues of material fact, nor that they are entitled to judgment as a matter of law on this claim. [[23]](#footnote-23)

**CONCLUSION**

Upon consideration of Parents’ *Motion for Summary Judgment* and accompanying documents, as well as the District’s *Opposition* thereto and accompanying documents, I find that Parents have not met their burden to establish that there is no genuine issue of material fact relating to their claim that Belmont violated 603 CMR 28.04(5)(f) and that they are therefore entitled to relief, including an Order that the District be ordered to reconvene an IEP meeting by a particular date.

**ORDER**

Parents’ *Motion for Partial Summary Judgment* is hereby DENIED.

The Hearing remains scheduled for May 16 and 19, 2025 at the Offices of the BSEA.

By the Hearing Officer:

/s/ Amy Reichbach

Amy M. Reichbach

Dated: April 28, 2025

1. The initial version of this *Ruling* erroneously referenced July 26, 2024 in the first sentence as the date of Parents’ filing. [↑](#footnote-ref-1)
2. Although some filings reference Parent rather than Parents, the *Hearing Request* lists two parents. I therefore reference Parents throughout this *Ruling*. [↑](#footnote-ref-2)
3. In support of their request for an Order directing Belmont to reconvene a Team meeting by this date, Parents assert that the District failed to schedule a Resolution Meeting and that PRS mandated an IEP meeting deadline of April 4, 2025, but Belmont seeks to extend that deadline to May 2, 2025. [↑](#footnote-ref-3)
4. Along with their *Objection* to Belmont’s *Opposition*, Parents submitted additional emails from December 2024. As these documents (which pertain to the timeframe Parents contend is irrelevant to the instant *Motion for Partial Summary Judgment*) were not submitted as part of the Motion, I do not consider them. [↑](#footnote-ref-4)
5. See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986); *Maldonado-Denis v. Castillo-Rodriguez,* 23 F.3d 576, 581 (1st Cir. 1994). [↑](#footnote-ref-5)
6. 801 CMR 1.01(7)(h). [↑](#footnote-ref-6)
7. See *Anderson*, 477 U.S. at 247; *Maldonado-Denis,* 23 F.3d at 581; see also *In Re: Student v. Medway Public Schools,* BSEA # 2410703 (Figueroa, 2024) (applying this standard); *Student v. Littleton Public Schools*,BSEA # 2313812 (Putney-Yaceshyn, 2023) (same). [↑](#footnote-ref-7)
8. *French v. Merrill*, 15 F.4th 116, 123 (1st Cir. 2021) (internal citation omitted). [↑](#footnote-ref-8)
9. See *Anderson*, 477 U.S. at 248. [↑](#footnote-ref-9)
10. *Id*. [↑](#footnote-ref-10)
11. See *Adickes*, 398 U.S. at 157; *Anderson*, 477 U.S. at255; see also *Maldonado-Denis*, 23 F.3d at 581 (summary judgment involves “scrutinizing the entire record in the light most flattering to the nonmovant and indulging all reasonable inferences in that party’s favor”). [↑](#footnote-ref-11)
12. *Anderson*, 477 U.S. at 250. [↑](#footnote-ref-12)
13. *Maldonado-Denis*, 23 F.3d at 581 (internal citation omitted). [↑](#footnote-ref-13)
14. *Anderson*, 477 U.S. at 249; *Mack v. Great Atl. & Pac. Tea Co.,* 871 F.2d 179, 181 (1st Cir. 1989). [↑](#footnote-ref-14)
15. *Medina-Munoz v. R.J. Reynolds Tobacco Co.,* 896 F.2d 5, 8 (1st Cir. 1990). [↑](#footnote-ref-15)
16. See *Anderson*, 477 U.S. at 249-50. [↑](#footnote-ref-16)
17. 603 CMR 28.04(5). [↑](#footnote-ref-17)
18. See 603 CMR 28.04(5)(b). [↑](#footnote-ref-18)
19. See 603 CMR 28.02; 603 CMR 28.04(5)(a). [↑](#footnote-ref-19)
20. 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); see *Roland M. v Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990). [↑](#footnote-ref-20)
21. See *Michael D.M. ex rel. Michael M. v. Pemi-Baker Reg’l Sch. Dist.*, 2004 U.S. Dist. LEXIS 17400, at \*12 (D.N.H 2004); see also *Murphy v. Timberlane Reg’l Sch. Dist.* 22 F.3d 1186, 1196 (1st Cir. 1994) (“It is plainly true, of course . . . that not every procedural irregularity gives rise to liability under the IDEA”). [↑](#footnote-ref-21)
22. See 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2); *Roland M.*, 910 F.2d at 994; *Murphy*, 22 F.3d at 1196. [↑](#footnote-ref-22)
23. See *Anderson*, 477 U.S. at 247; *Maldonado-Denis,* 23 F.3d at 581; *In Re: Student v. Medway Public Schools*. [↑](#footnote-ref-23)