**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Atlantis Charter School BSEA #2510159**

**RULING ON**

**ATLANTIS CHARTER SCHOOLS' MOTION IN LIMINE TO EXCLUDE PORTIONS OF PARENT'S EVIDENCE**

This matter comes before the Hearing Officer on *Atlantis Charter School’s Motion In Limine To Exclude Portions Of Parent's Evidence* (*Motion*) filed with the Bureau of Special Education Appeals (BSEA) by Atlantis Charter School (Atlantis or the District) on April 1, 2025. In it, Atlantis requests that the Hearing Officer exclude Parent Exhibit # 7 which includes two articles ("Investigating the Evidence of the Real-Life Impact of Acute Hyperglycemia" and "Does Glycemic Variability Impact Mood and Quality of Life?") and Parent Exhibit #8 which is an audio recording of Student’s March 4, 2025 suspension hearing.

Via email dated April 1, 2025, Parent submitted *Parent’s* *Response*, stating,

“All you have to do is google does hyperglycemia cause mood changes. It’s simple. Both medical articles were published in medical journals that [are] reputable and peer-reviewed. As for the suspension hearing audio, it clearly shows violation of her 504. They punished her for skipping class while she was getting water and using the restroom which are both part of her 504.”

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 a 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 factual statements set forth are taken as true for purposes of this *Ruling* only.

1. Student is currently a 10th-grade student attending Atlantis Charter School.
2. Student is diagnosed with Type 1 Diabetes. She is on a 504 Accommodation Plan which includes accommodations for make-up work; absences; access to water, bathroom and iPhone; and in-class procedures for low blood sugar.
3. On March 3, 2025, while in class, Student asked to use the restroom but was denied. She then asked if she could fill up her water bottle. The teacher asked her to wait for five minutes out of concern that another student was outside of the room waiting for Student. Student waited and asked again. The teacher allowed her to go. Student left the classroom. A few minutes later, the door opened, and Student’s friend sprinted out of the room. The teacher saw the friend and another student running down the hallway. He alerted the front office of the situation.
4. According to Parent, Student was checking her phone to monitor her hyperglycemia. Student noticed several texts from another student, including one with a “‘headtap’ along with an emoji of a gun- which means I will shoot you (Student) in the head.” Student went to fill her water bottle, “checked her sugar, and utilized [the] bathroom where her friends were and they saw the message [the other student had] sent and they all made their way to the first floor.”
5. A suspension hearing was held on March 4, 2025. Student was found to have incited/attempting to incite other students to create a disturbance. She was issued an eight-day out-of-school suspension.
6. On March 7, 2025, the District convened a Manifestation Determination Review (MDR) meeting. The Team determined that Student's behavior was not a manifestation of her disability. Parent disagreed, asserting that, because Student experiences "highs" in which she “experiences ‘irritability and anger,’" the conduct was a manifestation of Student 's Type I Diabetes.
7. On March 20, 2025, Parent filed a Hearing Request alleging that the District erred in its manifestation determination. In part, Parent asserted that “[h]yperglycemia is known to cause irritability and anger, as well as increased thirst and urination· hence why [Student] was utilizing the bathroom and bubbler per her 504 plan.” Parent also asserted that the District failed to implement Student’s 504 Plan.
8. An expedited hearing in this matter is scheduled for April 7, 2025, on the sole issue of whether Student’s behavior on March 3, 2025, was a manifestation of her disability.
9. On March 29, 2025, Parent submitted seven exhibits to be admitted into evidence at hearing. Exhibit # 7 included two articles ("Investigating the Evidence of the Real-Life Impact of Acute Hyperglycemia" and "Does Glycemic Variability Impact Mood and Quality of Life?").
10. On April 1, 2025, Parent submitted an audio recording of the suspension hearing which took place on March 4, 2025, to be admitted as Exhibit #8 into evidence at hearing.

**II. LEGAL STANDARDS AND DISCUSSION:**

* 1. *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.”

* 1. *Application of Legal Standards:*

After reviewing the District’s *Motion* andParent’s *Response* in light of the sole issue for hearing set forth above, I ALLOW the District’s Motion relative to Exhibit #7 but DENY it as to Exhibit #8.

The District requested that the articles submitted as Exhibit #7 be excluded from evidence on the grounds of hearsay. Specifically, Atlantis argues, in part, that

“[i]n Massachusetts, the ‘learned treatise’ hearsay exception allows statements from published treatises, periodicals, or pamphlets on science or art to be admissible as evidence if the writer is recognized as an expert and the statements are relevant, but only when called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination.

The Supreme Judicial Court of Massachusetts [in Kace v. Liang, 472 Mass. 630(2015)] has narrowed this exception even further … explain[ing] that this requirement can only be satisfied by the person who authors the publication….

In the instant case, Parent has not identified an expert witness nor the authors of these articles to present testimony about them with regard to whether or not the articles found on the internet would even apply to this particular student. There would be no opportunity to properly address the ‘learned treatise’ exception nor an opportunity to cross-examine the authors. Therefore, they must be excluded as evidence.”[[1]](#footnote-1)

As discussed above, the BSEA is not bound by the rules of hearsay[[2]](#footnote-2), and as such, I need not consider whether the articles submitted by Parent satisfy the learned treatise exception to the hearsay rule. I need only consider whether Exhibit #7 is “the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs”[[3]](#footnote-3) and whether it is “relevant and reliable.”[[4]](#footnote-4) Because the sole issue at hearing is whether Student’s behavior on March 3, 2025 was a manifestation of her disability of Type 1 Diabetes, and Parent argues that “[h]yperglycemia is known to cause irritability and anger, as well as increased thirst and urination hence why [Student] was utilizing the bathroom and bubbler per her 504 plan,” information on “the Real-Life Impact of Acute Hyperglycemia" and how "Glycemic Variability Impact[s] Mood" is relevant.

I next examine whether Exhibit #7 is reliable. Parent argues that “[a]ll you have to do is google does hyperglycemia cause mood changes…. Both medical articles were published in medical journals that [are] reputable and peer reviewed.”  I understand Parent’s perspective, and Exhibit #7 may offer useful background information on the potential connection between hyperglycemia and mood or behavior changes. However, while the articles may be reputable and peer-reviewed, and the studies referenced therein may offer valuable insights into the broader relationship between hyperglycemia and mood changes, these articles do not address whether the Student’s specific circumstances and health profile align with the findings presented in those articles. In the context of evaluating the reliability of Exhibit #7, I must consider whether the articles’ general findings can be reasonably extrapolated to Student’s unique condition; without a direct connection between the articles' content and Student's medical history, and without an expert to testify regarding same, the articles lose their potential relevance. As such, Exhibit # 7 must be excluded.

The District further seeks exclusion of Exhibit #8, a recording of Student’s March 4, 2025 suspension hearing. Although the District offered to “stipulate that the suspension hearing took place at the identified date and time,” it argued that the

“current BSEA matter is regarding the Manifestation Determination Review and results and is not meant to litigate or appeal the suspension hearing….This is not the proper forum to appeal the suspension hearing, and going further beyond an acknowledgment that the suspension hearing took place would cause undue delay and is a needless presentation of cumulative information.”

In response, Parent asserted that “the suspension hearing audio [] clearly shows violation of [Student’s] 504” as Student was “punished her for skipping class while she was getting water and using the restroom which are both part of her 504.”

It is premature at this juncture to exclude the audio recording from evidence, as the facts and circumstances surrounding Student’s access to water and the bathroom are still in dispute, and the audio recording may offer relevant information thereof. However, it should be noted that the audio recording will not be played in full at the hearing. The District may renew its *Motion* (relative to Exhibit #8) at the conclusion of testimony.

**III. ORDER:**

The District’s *Motion* is DENIED, in part, and ALLOWED, in part. Specifically, Exhibit # 7 will be excluded from evidence. Exhibit #8 will be admitted into evidence at the hearing. However, the District may renew its *Motion* at the conclusion of testimony.

So Ordered,

/s/ Alina Kantor Nir
Alina Kantor Nir

Date: April 2, 2025

1. Internal citations omitted. [↑](#footnote-ref-1)
2. See BSEA Hearing Rule IX(C). [↑](#footnote-ref-2)
3. See *id*. [↑](#footnote-ref-3)
4. See BSEA Hearing Rule IX(B). [↑](#footnote-ref-4)