**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: **Student & Braintree Public Schools BSEA #2511326**

**RULING ON REQUESTS BY PARENT[[1]](#footnote-1)**

On April 16, 2025, Parent filed a document entitled “Request for Virtual Public Hearing and Accommodations Due to Disabilities and Language Barrier” (*First Request*). On April 18, 2025, Parent also filed a document entitled “Request for Emergency Short Orders Notice” (*Second Request*). On April 23, 2025, the District filed a document entitled “Braintree Public Schools’ Opposition to Parent’s Request for Virtual Public Hearing” (*Opposition to First Request*). Also on April 23, 2025, the District filed a document entitled “Braintree Public Schools’ Response to Parent’s ‘Request for Emergency Short Orders Notice’” (*Opposition to Second Request*). Neither Party requested a Hearing on any of these pleadings. As 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 *Hearing Rules for Special Education Appeals* (*Hearing Rules*)Rule VII(D). For the reasons set forth below, Parent’s *First Request* is **ALLOWED in part and DENIED without prejudice in part**. Parent’s *Second Request* is **DENIED without prejudice**.

DISCUSSION

1. SUMMARY OF ARGUMENTS

Parent’s *First Request* consists of five numbered paragraphs[[2]](#footnote-2). Parent requests and contends that a “virtual public hearing” is necessary as an accommodation for unspecified “disabilities”, as well as her need to care for her “disabled child [who is] at home”. She also submits that a virtual public hearing is needed to accommodate the disabilities of her daughter “who suffers from severe social anxiety, among other disabilities, making it harmful for her to be in a public unfamiliar setting” and who will be a witness in this matter. Further, Parent claims she feels unsafe around the District’s attorney and advises that “allowing her to proceed with the case puts both me and my child at great risk (sic) we do not feel safe to be in person around people that aggressive”.

The District opposes both having a virtual and a public hearing. As to the request for a public hearing per se, the District questions if Parent can legally execute the waivers and releases on behalf of Student necessary to proceed with a public hearing. This is owing to a recent appointment of a Guardian Ad Litem (GAL) for Student by the Norfolk Juvenile Court (NJC) who is “the sole party designated to sign on behalf of [Student] for all IEP and school related issues that take place while this care and protection case remains open in the [NJC] until further action from the Court” (*GAL Order*) [[3]](#footnote-3).

Further, the District asserts that an in-person hearing is the default venue at the BSEA unless agreed to by both parties, and it does not so agree. However, to the extent that travel distance is a concern, the District offers to move the in-person hearing to a mutually agreed-upon location closer to the Parent. Further, the District submits that if Parent and/or Student’s virtual participation is deemed necessary “as a disability-related accommodation” then all “remaining participants, including members of the public [should still] be required to participate and attend in-person”. According to the District it has “significant concerns” if members of the public are permitted to attend and access the hearing virtually based upon the prior ten (10) day virtual public hearing that occurred between the Parties between March and September of 2024. The District alleges that during Parent’s testimony at the prior virtual public hearing, she made “multiple false statements” regarding the conduct of certain District staff and counsel, that was allegedly “relative to [Parent’s] national origin”. These false statements, claims the District, “threatened the integrity and professional livelihood of these individuals and were witnessed by all members of the public attending the hearing virtually.”

Parent’s *Second Request*[[4]](#footnote-4) seeks to preclude the filing of the above-noted *GAL Order*,a copy of which the District initially submitted on April 18, 2024. After setting forth substantial allegations pertaining to the procedural history and dispute pending in the NJC, Parent claimed that the Judge “made it clear that … documents from [the NJC] cannot be shared with the [D]istrict or any other court. [The Judge] stated that she would only allow the [D]istrict to inform BSEA that a GAL has been appointed for the child, without sharing any documents.” Parent advises that she has filed an emergency motion in the NJC pertaining to the District and DCF “distributing highly confidential documents”. Parent concluded by requesting that the BSEA “issue an order for the district to immediately cease retaliation and stop distributing confidential documents without a court order. And (sic) comply with the do (sic) process providing timely requested documents with requested translations[[5]](#footnote-5)”.

The District opposes the *Second Request* and disputes Parent’s allegations that the *GAL Order* was not allowed to be provided to the BSEA. In support of its argument, the District provided a Release signed by Parent on January 17, 2025, for DCF to share information with the District, another copy of the *GAL Order*, and an email from an Attorney for DCF to the District’s attorney advising “GAL appointment and clarification. The judge agreed this can be given to BSEA and other entities as needed.”

With these arguments in mind, I turn to Parent’s *Requests*, noting that since the District relies on the *GAL Order* for a portion of its argument in its *Opposition to First Request*, I consider Parent’s *Second Request* first.

2. *SECOND REQUEST*

Parent’s *Second Request* seeks to have the *GAL Order* “disregarded” based upon her unsupported allegation that the NJC prohibited any of its documents from being filed in any other proceeding or forum. Parent, herself, however, on April 15, 2025, filed several pleadings from the same NJC proceeding in this matter[[6]](#footnote-6). The documents filed by Parent on that day appear to involve the Court’s allowance of an appointment of an “educational advocate” in that proceeding[[7]](#footnote-7). Parent cannot have it both ways, relying on pleadings from the NJC when they support her position, but seeking to exclude them when they do not. Further, based upon the attachments to the *Opposition to Second Request*, Parent may be mistaken in her interpretation of the NJC Judge’s instructions about the release of the *GAL Order*, although she acknowledges that she has properly sought to clarify these instructions with the NJC. Thus, at this time, absent any further Order of the NJC to the contrary, Parent’s *Second Request* is **DENIED without prejudice[[8]](#footnote-8)**, and the *GAL Order* remains filed as of April 18, 2025.

3. *FIRST REQUEST*[[9]](#footnote-9)

At the outset, I note that I have previously denied Parent’s request for the District’s attorney to not be involved in this proceeding via a *Ruling* issued on April 16, 2025. To the extent Parent’s *First Request* is seeking to have me reconsider this *Ruling*, I decline to do so, as Parent has not presented any argument about her concerns with the District’s attorney that was not originally raised[[10]](#footnote-10).

I now turn to the request for a “virtual public hearing”, taking each request in turn. First, as to the request for a virtual hearing, while I agree with the District that the default venue for BSEA hearings is an in-person hearing at the offices of the BSEA, under 801 CMR 1.01(7)(e), parties can move for a change in venue[[11]](#footnote-11). Such requests shall be made after consideration of the,

“objections of Parties, the transportation expenses of the [Hearing] Officer, the possibility of conducting the hearing by means of telecommunication facilities, the availability of either stenographic services or a suitable recording system, the availability of a neutral and appropriate hearing site, the availability of witnesses because of their place of residence or state of health, and other appropriate matters.”

Here, after consideration of all these regulatory factors, and the arguments of the Parties, Parent’s request for a virtual hearing is **ALLOWED in part**. Given that Parent’s arguments implicate the “availability of witnesses because of their place of residence or state of health”, **Parent and Student, only, shall be permitted to participate virtually if they so choose**[[12]](#footnote-12). A personal virtual link will be provided to Parent and Student for their virtual participation, separately. However, in light of the District’s opposition, and given that the BSEA has sufficient telecommunication facilities and site space to support Parent and Student’s virtual participation, while also hosting the in-person hearing, **all other persons will participate in-person only at the offices of the BSEA**, 14 Summer Street, 4th Floor, Malden, Massachusetts.

I now turn to Parent’s request for a public hearing. Generally, in accordance with the IDEA, at the choice of a parent (and student if appropriate), an impartial due process hearing, requested pursuant to 20 USC 1415(b)(6)(a), can be open to the public[[13]](#footnote-13). Massachusetts defers to federal law with regard to this right. The IDEA and its regulations also require that due process hearings, including open due process hearings, maintain student confidentiality, as does the Family Educational Records Privacy Act (FERPA) and the Massachusetts student record laws and regulations[[14]](#footnote-14).

The BSEA, generally, and the undersigned Hearing Officer, specifically, have previously addressed requests for an open hearing as they relate to these confidentiality and student record protection provisions, noting, in particular, the disclosure concerns pertaining to such requests[[15]](#footnote-15). While acknowledging the obligation to defer to parental requests for public hearings despite the risks to students that may inure from allowing the public to participate in a due process hearing, BSEA hearing officers have imposed certain procedural pre-conditions in allowing these requests. These procedural pre-conditions confirm that parents (and students, if appropriate) are making a knowing and voluntary waiver of all confidentiality, privacy and student record protections that they, on behalf of themselves and their minor or incapacitated child, are otherwise entitled to in a closed hearing. They also fulfill the hearing officer’s obligations to ensure both an orderly presentation of the evidence, and that appropriate decorum and order are maintained during such hearings[[16]](#footnote-16).

In the instant matter, I find these procedural pre-conditions to be both warranted and necessary. The District has raised, however, a legitimate concern as to Parent’s ability to so waive Student’s confidentiality, privacy and student record protections given the *GAL Order[[17]](#footnote-17)*. Additional information must, therefore, be presented to confirm that the procedural pre-conditions can be implemented. Thus, should Parent continue to seek a public hearing in this matter, then, at least seven (7) days prior to first day of Hearing, Parent shall file either:

1. An *Affidavit* of Student’s GAL supporting Parent’s request for a public hearing and confirming her agreement to comply with (and execute as necessary any and all acknowledgments, and waivers) on behalf of Student, any procedural pre-conditions relating to this request for a public hearing that are to be imposed in this matter[[18]](#footnote-18);
2. A further Order of the NJC confirming that Parent retains the right, on behalf of Student, to pursue having the hearing open to the public and to waive any of Student’s associated confidentiality, privacy and student record protections that inure to closed due process hearings; or
3. Documentation evidencing that the matter pending in the NJC has been closed.

Unless and until any such filing is received, Parent’s request for a public hearing is **DENIED without prejudice**.

So Ordered by the Hearing Officer,

/s/ Marguerite M. Mitchell

Marguerite M. Mitchell

Dated: April 25, 2025

1. Consistent with Parent’s April 14, 2025, request to the BSEA, this *Ruling* is being provided to Parent in English upon issuance and is also being translated into XXX. The XXX translation will be mailed to Parent upon completion. [↑](#footnote-ref-1)
2. Paragraphs 1 and 2 pertain to requests for translated versions of BSEA issued documents (which the BSEA has already done and continues to agree to provide as per Footnote 1), and District issued documents (which have been or are in the course of also being provided). I note, however, that on April 23, 2025, Parent filed a new request challenging the speed at which the District’s translated documents are being provided to her. A response to this April 23, 2025, request is not due from the District until April 30, 2025, pursuant to *Hearing Rule VI* and will be addressed in a separate *Ruling*. The remaining 3 paragraphs relate to Parent’s request for a “virtual public hearing”. [↑](#footnote-ref-2)
3. This *GAL Order* was issued on April 10, 2025, and clarified via further Order of April 17, 2025. [↑](#footnote-ref-3)
4. Parent indicates she is seeking “emergency relief”. There is no procedural provision for “emergency relief” at the BSEA. Expedited due process hearings under *BSEA Hearing Rule II(C)* are limited to issues pertaining to discipline, consistent with the IDEA requirements, which issues are not involved in the underlying matter. Similarly, accelerated due process hearings under *BSEA Hearing Rule II(D)* are allowed only for situations where the health or safety of a student or others would be endangered by a delay, the special education services the student is currently receiving are “sufficiently inadequate such that harm to the student is likely” or the student is “currently without an available educational program or the student’s program will be terminated or interrupted immediately”; claims that also are not at issue in the instant matter. At best, Parent’s request could be interpreted as seeking to reduce the timeframe for the District to file written objections to her *Request*, under *Hearing Rule VII(C)*. However, as the District did so file its *Opposition to Second Request* in less time than required by *Hearing Rule VII(C*), this request is now moot. [↑](#footnote-ref-4)
5. As noted above, the District has been and continues to translate all documents filed in this matter, and the issue of the timeliness of this translation is still pending and will be the subject of a separate *Ruling*. [↑](#footnote-ref-5)
6. This filing was included with a series of emails that Parent submitted to support a request to exclude the District’s attorney from this matter. As discussed below, that was the subject of a *Ruling and Order* issued on April 16, 2025. [↑](#footnote-ref-6)
7. According to Parent’s April 15, 2025 filing, the Educational Advocate was requested by Student’s attorney in the NJC matter and is a separate person from the GAL identified in the *GAL Order*. [↑](#footnote-ref-7)
8. It may only be refiled if the NJC confirms that the *GAL Order* is not to be shared with the BSEA. [↑](#footnote-ref-8)
9. I have already considered and issued prior published *Rulings* addressing requests for an open hearing in separate due process proceedings. I set forth the applicable legal analysis from those matters, here, as it has not changed since I issued these *Rulings.* [↑](#footnote-ref-9)
10. See Fed.R.Civ.P. 60; *Villanueva-Mendez v. Nieves Vazquez*, 360 F.Supp.2d 320, 323 (D. Mass. 2005) (internal citations omitted) (“… a motion for reconsideration cannot be used as a vehicle to relitigate and/or rehash matters already litigated and decided by the Court. These motions are entertained by Courts if they seek to correct manifest errors of law or fact, present newly discovered evidence, or when there is an intervening change in law”). [↑](#footnote-ref-10)
11. According to the *Scope of Rules* section of the *Hearing Rules*, “unless modified explicitly by these *Rules*, hearings are conducted under the Formal Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.*”. [↑](#footnote-ref-11)
12. Additionally, any XXX interpreter (who will be provided to Parent at the Hearing at no cost to Parent) will also be allowed to participate virtually, at Parent’s request. [↑](#footnote-ref-12)
13. 34 CFR 300.512(c)(2); *see* 20 USC 1415(f)(1). [↑](#footnote-ref-13)
14. 20 USC 1232(g); 34 CFR 300.99 M.G.L. c. 71 §34D; 603 CMR 23.00; *see* 20 USC 1415(b)(7)(a) and (h)(4)(a); *Letter to Schad*, 105 LRP 4654 (Family Policy Compliance Office, 2004)“Transcripts’ and exhibits from a[n open IDEA] due process hearing that are maintained by a public school district subject to FERPA qualify as ‘education records’ if they contain information that is directly related to a student”, and the District must obtain written parental consent prior to disclosing the same. See Health Insurance Portability and Accountability Act (HIPAA), Public L. 104-191, providing additional confidentiality protections for any of a student’s medical and health information discussed during due process hearings [↑](#footnote-ref-14)
15. As Hearing Officer Byrne reasoned,

“When a hearing is limited to participants who are actually involved in the day-to-day life of the student and have pertinent knowledge of the history and parameters of the dispute, the Hearing Officer, the Parties and their lawyers may exercise a degree of supervision and/or control over the disclosure of the confidential student and family information that is routinely and necessarily discussed during an IDEA Hearing.  For example, unauthorized disclosure of confidential student information by school personnel may result in serious professional consequences. (See *e.g*., FERPA) [(citation omitted)]. That control evaporates when a hearing is open to the public.  And that lack of control over student information and family privacy expands exponentially when sensitive information is available to unknown parties on electronic platforms.  The BSEA has no authority to enforce restraints on the recording, duplication, exchange, publication, dissemination, disclosure, alteration, use or misuse of student or family information, images or voices.  It is reasonably foreseeable that highly sensitive personal information about [the Student] and the Parent could be made public and could result in significant personal and professional harm. It is doubtful that the framers of the IDEA anticipated the sort of information world in which we currently find ourselves. Nevertheless, the plain language of the governing statute offers no alternative to granting the Parent’s open hearing request.” *In Re: Ollie v. Springfield Public Schools*, BSEA #21-02164, 27 MSER 33 (Byrne, *Ruling*, 2021).

Similarly, Hearing Officer Figueroa explained,

“… the BSEA lacks authority to order anyone not directly connected with the Hearing to abstain from discussing or publishing on social media what they heard at the open hearing. The only way to maximize the likelihood that Student’s confidentiality will be preserved in the context of a BSEA hearing is by holding a closed hearing. Once the hearing is open, Parents must be prepared for the possibility that attendees who are neither employees of [the District] nor the BSEA, may discuss and divulge information related to the open hearing, and the Hearing Officer lacks authority to prevent or sanction said discussions in any context, including internet and/or social media.” *Student v. Medford Public Schools*, BSEA #20-02451, 26 MSER 40 (Figueroa, *Ruling,* 2019) [↑](#footnote-ref-15)
16. 603 CMR 28.08(5)(c) states, in pertinent part,

“The Special Education Appeals hearing officer shall have the power and the duty to conduct a fair hearing; to ensure that the rights of all parties are protected;…; to ensure an orderly presentation of the evidence and issues… to take such other steps as are appropriate to assure the orderly presentation of evidence and protection of the parties' rights at the hearing; to ensure a record is made of the proceedings;…””;

*see also* *Hearing Rule* IX(B)(15), advising that one of the powers and duties of Hearing Officers is to “[c]ensure, reprimand, or otherwise ensure that all participants conduct themselves in an appropriate manner.” [↑](#footnote-ref-16)
17. As noted above, the *GAL Order* indicates that its provisions apply “while this care and protection case remains open in the [NJC], until further action from the Court”. [↑](#footnote-ref-17)
18. Such procedural pre-conditions will be set forth separately, upon receipt of one of the required filings. [↑](#footnote-ref-18)