COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bureau of Special Education Appeals

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In Re: Student

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BSEA No. 1811410

Gardner Public Schools

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Athol-Royalston R.S.D.

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RULING ON GARDNER PUBLIC SCHOOLS' REQUEST FOR WRITTEN FINDINGS

Background[1]

On June 5, 2018 the Student's guardian ("Guardian") filed the instant hearing request with the BSEA. Neither the Guardian nor the Student was represented by an attorney or advocate until approximately June 22, 2018, when a lay advocate entered an appearance on their behalf. The advocate and the two school districts attempted to resolve the matter but were unable to do so.

On August 2, 2018, Gardner served Guardian with discovery by faxing interrogatories and a request for production of documents to the advocate. According to rule VI.C of the *Hearing Rules for Special Education Appeals*, if the Guardian objected to any of Gardner's discovery requests, she was required to file a *Notice of Objections* by August 12, 2018. Neither the advocate nor the Guardian filed such *Notice* or any other response to Gardner's discovery request within that timeline.

On August 10, 2018, present counsel for the Guardian entered an appearance in this matter.[2] On August 16, 2018 Guardian's counsel learned of Gardner's discovery requests and emailed a request for a copy to Gardner's attorney.

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[1] This background information is gleaned from the parties' submissions and BSEA administrative file, and is undisputed.

[2] The advocate has not withdrawn her appearance to date, but, to the knowledge of the Hearing Officer, has not participated in this matter since Guardian's counsel entered his appearance.

Gardner's attorney forwarded the discovery requests to Guardian's counsel on the following day, August 17, 2018,

On August 27, 2018, ten days after receipt of Gardner's discovery request, counsel for Student/Guardian filed *Parent's Notice of Objections to Gardner's Discovery* pursuant to Rule VI.C of the *Hearing Rules for Special Education Appeals*. On the same day, in an email to Student/Guardian's counsel, Gardner's attorney stated that the *Notice of Objections* was untimely because Gardner had served the advocate with discovery more than ten days earlier, on August 2, 2018. Guardian's counsel asked Gardner's attorney to have Gardner waive the ten-day deadline for filing a *Notice of Objections*, but Gardner's attorney indicated that his client refused to do so.

On August 28, 2018, the Guardian, through counsel, filed a *Motion to Extend Timeline for Objecting and Responding to Gardner Public Schools' [Discovery Requests].* (*"Motion"*) On August 30, 2018, Gardner filed an opposition to Guardian's *Motion*, seeking a ruling that any objections to Gardner's discovery requests were deemed waived as untimely, having been due on August 12 but not filed until August 27, 2018.[3]

On August 31, 2018 this hearing officer issued a one-word summary ruling that granted Guardian's *Motion*, without written findings or discussion. On September 5, 2018 Gardner filed a *Request for Written Findings* with respect to the August 31 ruling. On September 6, 2018, Guardian filed a *Response to Gardner Public Schools' Request for Findings*.

Discussion

Gardner asserts that written findings are necessary and/or appropriate in this matter because in Gardner's view, the hearing officer's ruling departs from a 2012 ruling[4] that explained the operation, rationale, and function of the ten-day window for filing a notice of objection to discovery set forth in Rule VI.C. Guardian argues that hearing officers may take into account "equitable factors" related to the facts of a case when addressing issues regarding timelines for discovery. Guardian states that in the instant case, the fact that counsel did not receive the discovery request until after the timeline for objection had elapsed constitutes such an equitable factor. In response, Gardner contends that Guardian has cited no legal precedent for the argument for considering equitable factors or otherwise departing from the ruling in *Danvers*.

Gardner is correct that Rule VI.C requires parties to file a *Notice of Objection* to discovery within 10 days of receipt, and that the *Danvers* ruling provides guidance in reconciling this 10-day notice requirement with the 30-day deadline

[3] Gardner stated that it was amenable to a "reasonable enlargement of time" for Guardian to actually produce the materials that Gardner had sought to discover.
[44] *In Re: Danvers Public Schools*, BSEA No. 12-3302, 18 MSER 245 (February 2012)

for responding to discovery set forth in Rule VI.B. This same Rule also provides, however, that '[t]he party upon whom the request [for discovery] is served shall respond within a period of thirty (30) calendar days *unless a shorter or longer period of time is established by the Hearing Officer*." *Id*. (*emphasis supplied*). BSEA hearing officers routinely grant requests by parties to extend time to respond to discovery requests for any number of reasons, including that the parties choose to defer discovery and allocate resources to settlement or that parties' or counsel's other obligations require such extensions. On the other hand, in the case of expedited or otherwise urgent disputes, hearing officers may grant a party's request to shorten the time for discovery. For a hearing officer to be able to grant extensions of time for actual responses to discovery but be precluded from granting a request to extend the 10-day objection to discovery under appropriate circumstances, resulting in mandatory waiver of any such objections, would be anomalous and serve only to preclude reasonable, non-prejudicial flexibility in procedural matters such as discovery.

The instant case is one in which granting Guardian's request for such an extension is appropriate. There is no dispute that at the time Gardner served its discovery request, Guardian was represented by a lay advocate who did not respond to the request. On the other hand, Guardian's current counsel acted quickly to put the discovery process on track shortly after becoming involved in the case. Guardian's counsel filed an appearance on August 10, 2018, two days before objections to discovery were due, learned of and requested copies of such discovery six calendar days and four business days later, on August 16, 2018, and actually received the requests on August 17, 2018. Counsel filed Guardian's *Notice of Objection* together with a request to extend the deadline for filing such *Notice* on August 27, 2018, ten days after being served with discovery. Additionally, as Guardian has pointed out, there is no prejudice to Gardner resulting from granting Guardian's request because the hearing is not scheduled to commence until October 22, 2018; moreover, the parties are in the process of scheduling a settlement conference during the first week of October 2018.

In light of all of the foregoing circumstances, the August 31, 2018 grant of an extension of time for Guardian to file a *Notice of Objection* to Gardner's discovery request was a reasonable and appropriate exercise of the hearing officer's discretion.

By the Hearing Officer,

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Dated: September 11, 2018