

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

In Re: Student

&

BSEA #2203555

Springfield Public Schools

RULING ON MOTIONS FOR EIGHT ITEMS OF RELIEF

This *Ruling* addresses a total of eight requests for relief by the Parent, contained in two separate submissions. On January 28, 2022, Parent filed a *Motion for Ruling in the Summary Judgment Motion, Motion for Sanctions, Motion for Subpoena to Produce Documents, Motion for Order to Remain in Current Placement, and Motion to Hold a Public Hearing* (hereafter, *Motions 1-5*).

On February 4, 2022, Parent filed a *Motion to Produce Documentation of Unidentified Special Education Teacher, Motion for District to be Severely Sanctioned for Intentionally Violating Parent and Student Rights, and Motion for Dr. Morris and Laurie Malandrinos to be Barred from Further Involvement from Student*. (hereafter, *Motions 6-8*).

On February 8, 2022, Springfield filed *Oppositions* to all of Parent's *Motions*. This *Ruling* addresses each of Parent's *Motions* in turn. For the sake of efficiency, I will reiterate the substance of each *Motion* and *Opposition* thereto only if necessary for clarity.

**1. Motion for Ruling on School's Motion for Summary Judgment:
GRANTED**

A ruling on this Motion is forthcoming.

2. Motion for Sanctions: DENIED

Parent seeks an order imposing "sanctions" on Springfield because it did not convene a resolution meeting prior to hearing in this matter, arguing that "[t]he district has failed to respond to my multiple requests for the resolution meeting and have ignored all attempts," and "intentionally and knowingly violated the

mandated resolution meeting requirement in three hearings.” Parent has not defined what she means by the term “sanctions.”

In response, Springfield disputes that Parent requested a resolution meeting, and, further, argues that Parent’s pursuit of hearing dates and pre-hearing activities indicate her willingness to go forward with a hearing without such meeting. The School also asserts that a resolution meeting would make no sense while a *Motion for Summary Judgment* is pending, and would not be an efficient use of time, that relevant rules do not require such a meeting under current circumstances, and that the District is nonetheless willing to convene a resolution meeting.

Parent’s request is not supported by pertinent law. The requirement that a resolution meeting be held 15 days after service of a due process complaint and prior to commencement of a hearing is contained in the IDEA at 20 USC §1415(f)(1)(B) and in corresponding federal regulations at 34 CFR §300.510. The federal requirement is reflected in Rule I.F. of the BSEA *Hearing Rules for Special Education Appeals (Hearing Rules)*.

Under these provisions, a matter may not proceed to hearing until (a) a school district has convened a resolution meeting but the parties have not reached resolution within 30 days from the date the hearing request was served; or, (b) the parties have agreed to pursue mediation in lieu of a resolution meeting; or, (c) the parties waive the resolution meeting in writing, or (d) the district fails to convene the meeting within the requisite time frame, and the parent requests that the hearing go forward. In the instant case, Springfield did not convene a resolution meeting within the statutory time frame, and Parent has continued to pursue litigation activities (such as agreeing to new hearing dates, conference calls, filing of motions, and the like); as such, the resolution meeting should be deemed as waived by both parties, and the hearing (and associated activities such as pre-hearing conferences, discovery, etc.) may proceed as scheduled by the parties.

Further, Parent has cited no provision in the relevant law that allows a hearing officer to impose sanctions or penalties on a school district that does not convene a resolution meeting, and I am not aware of any such provision. On the contrary, the only potential consequence for a school district’s failure to hold a resolution meeting is that the district loses its last chance to make an offer of settlement prior to having to proceed to a due process hearing.¹ As such, Parent’s request for sanctions against Springfield for failure to convene a resolution meeting must be denied.

¹ Of course, the parties may engage in settlement activities after the hearing process has begun, but by waiving a statutory resolution meeting, the district loses an opportunity to settle before having to undertake the time and expense of litigation.

Lastly, Parent argues that “Springfield should be sanctioned and admonished for purposely ignoring statutory timelines and withholding evidence” regarding certain data related to Student’s graduation date. Parent’s statements on this issue are unproven allegations. Moreover, I am aware of no authority for the BSEA to impose sanctions or penalties² for alleged “withholding of evidence” or “purposely ignoring statutory timelines” prior to an evidentiary hearing on the merits of the case. Rather, if Parent proves her allegations at a hearing, and, further, proves that the School’s conduct deprived Student of a FAPE or prevented parent from fully participating in the IEP process, then she and/or Student might be entitled to compensatory services as a remedy. Parent’s request for sanctions is DENIED.

3. Motion for Subpoena: DENIED

It is not clear from Parent’s *Motion* precisely what documents she seeks. In any event, if Parent seeks production of documents she may do so either via the discovery process pursuant to Rule V.B. of the *Hearing Rules for Special Education Appeals*, or by the process for requesting subpoenas *duces tecum* set forth in Rule VII of the *Hearing Rules*. This *Motion* must be denied.³

4. Motion for Order to Remain in Current Placement: DENIED

As no change in Student’s placement prior to his 22nd birthday has been proposed, this *Motion* must be denied. If Parent is, in fact, seeking “stay put” rights to Student’s current placement beyond his 22nd birthday, such request cannot be granted. By operation of statute, Student’s eligibility for special education services terminates upon his reaching the age of twenty-two. The “stay put” doctrine is inapplicable at that point because Student is no longer a “school aged child” within the meaning of federal and state special education statutes.⁴

If, at an evidentiary hearing, Parent meets her burden of proving that Student was denied a FAPE during his period of eligibility, and the hearing officer determines that compensatory services would be an appropriate remedy, such services may be awarded after termination of eligibility. *Pihl v. Massachusetts Dept. of Education*, 9 F.3d 154 (1st Cir., 1993). It is well settled, however, that

² Again, Parent has not defined what she means by “sanctions.”

³Notwithstanding the above, during a Zoom conference held on February 18, 2022, Parent further explained which documents she was seeking, and agreed to submit her document request to Springfield in writing on that day. Springfield agreed to respond by March 4, 2022.

⁴ The IDEA at 20 USC §1412(a)(1)(A) and (B) requires states, as a condition of receiving federal funding, to provide FAPE to children with disabilities from the ages of three through 21, inclusive, unless state law does not require such education for children between the ages of three and five or 18 and 21. The Massachusetts special education statute, MGL c. 71B, extends eligibility to children under the age of 22 when it defines a “school aged child” as “any person of ages three through twenty-one who has not attained a high school diploma or its equivalent. MGL c. 71B, §1. Thus, an individual who has reached the age of 22 is no longer a “school aged child” within the meaning of the statute.

extension of the period of eligibility beyond the statutory age limit is not an available form of relief. *Dracut Public Schools v. BSEA, et al.*, 737 F.Supp. 35 (D. Mass. 2010).

For the above-stated reasons, Parent's request for a "stay put" order must be denied.

5. Motion to Hold a Public Hearing: DEFERRED.

A ruling on this issue is deferred pending a colloquy on the record with Student regarding waiver of his privacy rights.

6. Motion to Produce Documentation of Unidentified Special Education Teacher: DENIED

Springfield has retained an individual to coordinate with the College Steps program to gather and assemble materials for Student's portfolio appeal for the Biology MCAS. Such coordination is addressed in the mediation agreement of October 2021. If Parent is dissatisfied with the implementation of this agreement, she must direct her concerns to the mediator and/or pursue the matter in a court of competent jurisdiction. Because the hearing officer may not address matters covered by mediation agreements, this *Motion* must be DENIED.

7. Motion for District to be Severely Sanctioned for Intentionally Violating Parent and Student Rights: DENIED

Parent has made multiple allegations that the Springfield Public Schools and various of its employees have intentionally violated Parent's and Student's rights under the IDEA and other provisions. These are unproven statements which may or may not fall within the jurisdiction of the BSEA. If these allegations are material to the issues in dispute in this case, then Parent may seek to prove them at an evidentiary hearing. If Parent prevails on these claims, the hearing officer may order appropriate relief. However, there is no authority for the BSEA to impose unspecified sanctions for unproven allegations prior to a hearing on the merits. As such, the *Motion* is denied.

8. Motion for Dr. Morris and Laurie Malandrinos to be Barred from Further Involvement from Student. DENIED

It is well settled that "within the basic framework of an IEP, schools have considerable professional discretion and flexibility in how they fulfill their responsibilities." *In re: Norton Public Schools*, BSEA No. 1609348 (Berman, 2017) citing *M. v. Falmouth School District*, 847 F.3d 19 (1st Cir. 2017). Such discretion extends to areas such as staff assignments so long as the goals and objectives of the IEP can be met and the student can make effective progress. *In re: Norton*, citing *In re: Dennis-Yarmouth RSD*, BSEA No. 03-4447 (Putney-

Yaceshyn, 2004). *See also In Re: Northborough Public Schools*, BSEA No. 2201162 (Kantor Nir, 2022). Parent has cited no authority that would allow a hearing officer to unilaterally bar named employees of the district from carrying out their professional responsibilities regarding a particular student based on unproven allegations. This *Motion* must be denied.

CONCLUSION AND ORDER

For the reasons stated above, Parent's Motion is GRANTED as to *Motion* No. 1, DEFERRED as to Motion No. 5, and DENIED, as to *Motions* Nos. 2, 3, 4, 6, 7, and 8

By the Hearing Officer,

/s/ *Sara Berman*

Sara Berman

Dated: February 23, 2022