

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

**In Re: Student v. Springfield Public Schools**

**BSEA # 2208440**

**RULING ON SPRINGFIELD PUBLIC SCHOOLS'  
MOTION TO POSTPONE HEARING AND PARENT'S MOTION FOR SANCTIONS**

This matter comes before the Hearing Officer on Springfield Public Schools' September 19, 2022 Motion for Protective Order Relative to Parent's Request for Production of Documents and Motion to Postpone Hearing (hereinafter, *Motion to Postpone*).<sup>1</sup> Specifically, the Springfield Public Schools (the District or Springfield) requests a postponement of the hearing in this matter which is currently scheduled to begin on October 18, 2022.

On September 21, 2022, Parent filed *Motion to Quash Protective Order and Postponement and Sanctions/Admonishment for Violation of Parents [sic] Right to Required Resolution Meeting (Motion for Sanctions)*.<sup>2</sup> In it, Parent asserts that the District must be sanctioned for refusing to convene the Resolution Meeting.

For the reasons set forth below, Springfield Public Schools' *Motion to Postpone* is hereby ALLOWED. Parent's *Motion for Sanctions* is hereby DENIED.

**PROCEDURAL HISTORY AND RELEVANT FACTS:**

1. Student is a 6th grade student in the Springfield Public Schools.
2. On April 11, 2022, the District held an IEP meeting without Parent present.
3. On April 20, 2022, student was involved in sexual misconduct for which he was suspended.
4. On April 26, 2022, Parent filed a Request for Hearing seeking an Order to remove Student's suspension from his record as well as an "Order for compensatory services"; an Order that the District "violated parent's rights by moving forward with IEP meeting without parent"; an Order that the District "failed to update and implement students[sic] IEP"; and an Order "for a [p]lacement in a different school."
5. The hearing was postponed for good cause until October 18, 2022.
6. On September 16, 2022, Parent filed an Amended Hearing Request adding the following issues for hearing:

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<sup>1</sup> This Ruling will not address the District's *Motion for Protective Order* since Parent has requested a hearing thereon, and said motion session is in the process of being scheduled.

<sup>2</sup> For the same reason articulated in Footnote No. 1, this Ruling will not address Parent's *Motion to Quash*.

- “1. Whether the school district [denied Student a FAPE when it] failed to report and conduct a [T]itle IX complaint when [Student] reported being touched sexually by a student....
2. Whether [the] District denied [a] FAPE to [Student] after sending him to a 45-day placement at Center [S]chool for observations then came to the meeting denied [C]enter [S]chool[‘s] recommendations including placement, learning disability SLD form, Executive functioning goal, and self-regulation goals.
3. Whether [the Director of Special Education for the Springfield Public Schools] denied [Student a] FAPE by making unilateral placement decisions in the IEP meeting
4. Whether [the] conduct [of [the Director of Special Education for the Springfield Public Schools] in the IEP meeting was retaliatory and denied student [a] FAPE because [of Student’s] advocate.
5. Whether the IEP was unilaterally written denying parent rights under IDEA and the 14<sup>th</sup> [E]qual [P]rotection [A]ct [sic] of the Constitution.
6. Whether the District denied [S]tudent [a] FAPE though [sic] undue influence by saying [Student] could only have transportation if she agreed to the unilaterally offered placement that is not appropriate
7. Whether the District owe[s] [Student] compensatory services.”

Parent sought an Order for compensatory services; an Order that the District “violated parent’s rights by moving forward with IEP meeting without parent; an Order that the “District failed to update and implement students[sic] IEP”; an Order for a placement at Center School; an Order that “the most current proposed IEP was unilaterally written”; and an Order that “the District’s retaliation denied student FAPE and Parent.”<sup>3</sup> The BSEA’s Recalculated Notice of Hearing scheduled the initial hearing date for October 21, 2022

7. To date, the parties have participated in 6 conference calls with the Hearing Officer.
8. On September 19, 2022, the District filed the instant *Motion to Postpone*, requesting a one-month continuance
9. On September 19, Parent indicated via email, through her Advocate, that she is not opposed to a postponement of the hearing provided that the dates for which the current matter had been scheduled now become available for a different matter in which the Advocate is involved. Also via email, the District responded, through its Counsel, that it cannot agree to said condition as the two matters involve different parties.
10. Via emails dating from September 19, 2022 to September 21, 2022, Parent, through her Advocate, indicated she would be amenable to a short postponement provided the District convened a Resolution Meeting. District’s Counsel questioned the value of holding a resolution meeting.
11. On September 21, 2022, Parent filed her *Motion for Sanctions* asserting that the “District must not be allowed to violate parent rights intentionally, and because [Springfield] denied the parent her mandatory Resolution meeting [the District]

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<sup>3</sup> On September 20, 2022, in *Ruling on Springfield Public schools’ Motion to Dismiss*, the Hearing Officer dismissed Parent’s 14<sup>th</sup> Amendment and retaliation claims but ruled that Parent’s claim that the District’s failure to conduct a Title IX investigation resulted in a denial of a FAPE survives dismissal.

forfeit[s] [its] right to request any postponement placing the hearing on the 45 day track.” However, she also stated that “[i]n light of the need to[sic] a motions Hearing and preparation we will agree to a postponement not longer than two weeks.”

## **LEGAL STANDARDS:**

### *1. Legal Standard for Postponements*

Hearing Officers are bound by the *BSEA Hearing Rules for Special Education Appeals (Hearing Rules)* and the Standard Rules of Adjudicatory Practice and Procedure, 801 Code Mass Regs 1.01. *BSEA Hearing Rule III* governs requests for postponement. Pursuant to this rule, a party may request postponement of a hearing at least 6 business days before the scheduled hearing date. The Hearing Officer may grant this request for good cause. The decision whether to postpone a hearing is within the discretion of the Hearing Officer, who must give serious consideration to opposition to a request.

### *2. Legal Standard for Resolution Meetings*

The Individual with Disabilities in Education Act (IDEA) requires a school district to hold a resolution session within 15 days of receiving notice of a parent’s due process complaint.<sup>4</sup> When a party files an amended due process complaint, the timelines for the resolution meeting begin again with the filing of the amended complaint.<sup>5</sup> A resolution meeting is required unless both the parent and the district agree to waive it or agree to use the mediation process in lieu of the resolution meeting.<sup>6</sup> The purpose of this requirement is to ensure that the parties have an opportunity to resolve the parent’s complaint before heading to due process.<sup>7</sup>

The IDEA requires the attendance of “a representative of the [LEA] who has decision-making authority” at the resolution meeting.<sup>8</sup> It should also include the parent and relevant members of the IEP team who have specific knowledge of the facts identified in the due process complaint.<sup>9</sup> A school district may not bring its attorney to the resolution meeting unless the parent is accompanied by an attorney.<sup>10</sup>

The burden is on the local educational agency to convene the resolution meeting.<sup>11</sup> The district does not have to convene a resolution meeting if: 1) the parent and the district agree in writing to waive the meeting; or 2) the parent and the district agree to mediate the dispute.<sup>12</sup> If the district fails to hold the resolution meeting within 15 days of receiving notice of a parent’s due process

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<sup>4</sup> See 20 USC 1415(f)(1)(B); 34 CFR 300.510(a).

<sup>5</sup> 34 CFR 300.508 (d)(4); and 71 Fed. Reg. 46,698 (2006).

<sup>6</sup> See 34 CFR 300.510(a)(3).

<sup>7</sup> See 34 CFR 300.510(a)(2); see also *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Educ. Act (Part B)*, 61 IDELR 232 (OSEP 2013).

<sup>8</sup> 34 CFR 300.510(a)(1)(i).

<sup>9</sup> See 34 CFR 300.510 (a)(1).

<sup>10</sup> 34 CFR 300.510 (a)(1)(ii). See also *Letter to Lawson*, 55 IDELR 232 (OSEP 2010) (holding that the presence of a non-attorney representative in the resolution meeting does not trigger the district’s right to bring in its attorney).

<sup>11</sup> See 34 CFR 300.510(a)(1).

<sup>12</sup> 34 CFR 300.510 (a)(3).

complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.<sup>13</sup>

#### **APPLICATION OF LEGAL STANDARDS:**

With regard to the *Motion to Postpone*, the District argues as follows:

“While the issue of amending the hearing request has been discussed in conference calls dating back to at least June 22, 2022, the Parent waited until September 15 to file the Amended Complaint. The Amended Complaint contains 7 new issues and 6 new claims for relief, some of which the District believes are outside the jurisdiction of the BSEA and therefore, intends to file a Motion to Dismiss. The claims raised in the amended complaint arise out of alleged facts that occurred PRIOR to the original hearing request being filed so therefore could have and should have been included in the original filing. There is simply not enough time between September 15 and the first day of hearing on October 18 to comply with the newly received discovery, receive a Ruling on the Motion for Protective Order, allow time for the District to file a Motion to Dismiss and receive Parent's response, and prepare for hearing. Forcing the District to go to hearing just over 30 days from the date of the Amended Complaint would cause unfair prejudice to the District.”

I conclude that “good cause” has been shown for the need for a short continuance of the present matter.<sup>14</sup> Although Parent disputes the appropriateness of the program proposed by the District, Student is attending his stay-put placement, and neither party, in their pleadings, has reported immediate concerns. Moreover, other than conditioning the postponement on the scheduling of other matters and the convening of the Resolution Meeting, Parent has not articulated any reason as to why she would be prejudiced by a short continuance, noting even that, as she has requested a hearing on this Motion and motion to compel that she intends to file, Parent will “agree to a postponement not longer than two weeks.”<sup>15</sup>

The only compelling argument that Parent asserts for denial of the District’s request to postpone the hearing by a one-month period is the District’s refusal to convene the Resolution Meeting. As indicated in the LEGAL STANDARDS section *supra*, the burden is on Springfield to convene the resolution meeting,<sup>16</sup> and, as a result of its failure to do so, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.<sup>17</sup> Nevertheless, as Parent requested a hearing on this *Motion* and indicated her intention to file additional discovery motions which she believes require hearings as well, I find that this matter will require a short postponement. Therefore, the District’s *Motion to Postpone* is ALLOWED.

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<sup>13</sup> 34 CFR 300.510 (b)(5).

<sup>14</sup> 801 CMR 1.01(7)(d).

<sup>15</sup> I note that the Hearing Officer’s schedule precludes a two-week postponement. I also note that the Hearing Officer has been exploring the parties’ availability since the instant *Motion* was filed.

<sup>16</sup> See 34 CFR 300.510(a)(1).

<sup>17</sup> 34 CFR 300.510 (b)(5).

With regard to Parent’s *Motion for Sanctions*, Parent cites to *Letter to Armstrong*, 28 IDELR 303 (OSEP 1997) in arguing that “[w]hether hearing officers have the authority to issue disciplinary sanctions against a party or the party’s attorney for what the hearing officer regards as hearing misconduct is a matter of state law, according to OSEP [and that a] [f]ew states expressly grant IDEA hearing officers sanctioning authority. This minority of states includes California, Texas, Massachusetts, and Minnesota.” However, I am unable to find any grant in the Massachusetts special education law or its implementing regulations that confers upon me the ability to sanction a school district for failure to convene the Resolution Meeting.

In addition, I note that I explored this same issue in my Ruling in *In re: Student & Springfield Public Schools*, BSEA # 2208440 (2021). There, I cited Hearing Officer Sara Berman’s *Ruling on Motions for Eight Items of Relief in In re: Student v. Springfield Public Schools*, BSEA # 2203555, in which she stated, “Neither federal nor state law include[s] any provisions allowing a hearing officer to impose sanctions or penalties on a school district that does not convene a resolution meeting.”<sup>18</sup> Here too, I agree with Hearing Officer Berman’s analysis and determination in this regard. As such, Parent’s request for sanctions against Springfield for any alleged procedural violations during the resolution meeting is DENIED. Parent may, however, re-assert same at hearing and, “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.”<sup>19</sup> Parent’s *Motion for Sanctions* is DENIED.<sup>20</sup>

**ORDER:**

The Springfield Public Schools’ *Motion to Postpone Hearing* is ALLOWED. Parent’s *Motion for Sanctions* is DENIED.

Therefore, the matter will proceed accordingly:

1. A Hearing in this matter will take place via a virtual platform on November 22, 28, and December 8, 2022. It will begin at 9:30AM and conclude at 4:30PM, daily.<sup>21</sup>
2. Exhibits and witness lists are due at the close of business day on November 15, 2022.

So ordered,  
By the Hearing Officer,

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<sup>18</sup> *In re: Student v. Springfield Public Schools*, BSEA #2203555 (Ruling on Motions for Eight Items of Relief) (Berman, 2022).

<sup>19</sup> *Id.*

<sup>20</sup> To the extent that Parent seeks “*Admonishment for Violation of Parents [sic] Right to Required Resolution Meeting*,” the Hearing Officer notes that she has no knowledge of whether the District has convened a Resolution Meeting, to date, or whether it intends to do so within 15 days of receiving notice of Parent’s amended due process complaint. See 20 USC 1415(f)(1)(B); 34 CFR 300.510(a).

<sup>21</sup> On September 21, 2022, Parent requested that the Hearing be open to the public, and her request is ALLOWED. See 34 CFR Section 300.512(c)(2).

s/ Alina Kantor Nir

Alina Kantor Nir

Date: September 22, 2022