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

In Re: Student v. Springfield Public Schools **BSEA # 2208440**

RULING ON MULTIPLE MOTIONS

This matter comes before the Hearing Officer on multiple motions.

On September 19, 2022, the Springfield Public Schools (the District or Springfield) filed *Springfield Public Schools' Motion for Protective Order Relative to Parent's Request for Production of Documents and Motion to Postpone Hearing* (hereinafter, *Motion for Protective Order Relative to Discovery Request Nos. 5 and 6*[1]). Springfield seeks a protective order for Parent's Document Request No. 5 seeking "Title IX trainings in the district dating back two years" and Document Request No. 6 seeking "redacted Title IX complaint for 2021-2022 school year." In response, 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 to Quash* and *Motion for Sanctions Relative to Resolution Meeting*,[2] respectively).

On September 27, 2022, Parent filed *Parent's Motion for District to Produce Resumes and Credentials for [A]ll [SEBS] Programs, and Clinical Staffs[sic] Credentials, Motion for Sanctions and[/]or Admonishment for Violation of Resolution Meeting*[3] *(Motion to Produce Credentials* and *Second Motion for Sanctions Relative to Resolution Meeting*, respectively). In it, Parent asserts that she has a "right to see the credentials of the proposed placement, and request [that] the District is compelled to produce them." Parent sought a motion to compel and requested that the District be sanctioned for failing to comply with discovery. She also sought sanctions for the District's continued failure to convene a resolution meeting.

On October 3, 2022, Parent filed *Parent's Motions for Sanctions and/or Admonishments for Violations of Knowingly and Intentionally Interfering with the Impartial Due Process Hearing* (hereinafter, *Motion for Interfering*). In it, Parent asserted, in part, that the District developed the extended evaluation unilaterally without Parent's input in an "attempt[] to segregate this student

[1] On September 22, 2022, I issued *Ruling On Springfield Public Schools' Motion to Postpone Hearing and Parent's Motion for Sanctions*. Therefore, these issues are not addressed in this Ruling.
[2] The September 22, 2022 *Ruling On Springfield Public Schools' Motion to Postpone Hearing and Parent's Motion for Sanctions* also included a ruling on Parent's *Motion for Sanctions/Admonishment for Violation of Parents [sic] Right to Required Resolution Meeting*. Therefore, it is not addressed in the instant Ruling.
[3] This *Motion for Sanctions and[/]or Admonishment for Violation of Resolution Meeting* is distinct and different from the *Motion for Sanctions/Admonishment for Violation of Parents [sic] Right to Required Resolution Meeting* which was addressed in my September 22, 2022 *Ruling On Springfield Public Schools' Motion to Postpone Hearing and Parent's Motion for Sanctions.*

into [a] behavioral program prior to having all of the information [as] we have no tangible documentation that this student could not be successful in a full inclusion class room [sic] with 1-1 paraprofessional, a shared paraprofessional, partial inclusion ….” Parent also asserted that “special education students of color like [Student] in Springfield are suspended at rates two to three times that of other students, which makes the action by Dr. Morris[, the Director of Special Education for the District,] a disturbing abuse of power.”

On October 11, 2022, the District filed *Springfield Public Schools' Motion in Opposition to Motion for Sanctions and/or Admonishment for Violation of Knowingly and Intentionally Interfering with the Impartial Due Process Hearing* (hereinafter, *Opposition to Motion for Interfering*), asserting that Dr. Morris issued an Extended Evaluation Consent Form to Parent in order to expedite the process of setting up and beginning the extended evaluation as Parent had made the request. In addition, the District contended that

> “the parent, through her advocate is arguing, on the one hand that SEBS is not appropriate and, on the other hand, that she does not have enough information about SEBS to decide if it is appropriate, [and this] does not amount to any procedural violation on the part of the District and/or Dr. Morris. Further perplexing is that the advocate is asserting violations of LRE and attempts to segregate the student by proposing SEBS while simultaneously arguing for an extended evaluation in an out of district school. Further, for the advocate to raise issues of racial discrimination in her motion without any alleged facts that even hint at any kind of discrimination whatsoever, is inflammatory and inappropriate.”

Also on October 11, 2022, the District filed *Springfield Public Schools' Motion for Protective Order Relative to Parent's Request for Resumes of all SEBS Employees* (hereinafter, *Motion for Protective Order Relative to Credentials*), asserting that Parent's email request for resumes was not a “formal discovery request” and further that the District is not required to provide this information as the “issue of the extended evaluation at SEBS is not an issue before the Hearing Officer for hearing but rather an offer made as part of discussions”; because Parent has been given a description of the SEBS program and credentials of teachers, it is unnecessary to require disclosure of individual resumes which contain personally identifiable information.[4] Moreover, the District asserted that this request “appears to be more of a ploy of sorts than an honest attempt to gather relevant information.” On October 11, 2022, Parent responded, asserting, in part, that “Parent has not signed the Extended Evaluation simply because Springfield is intentionally withholding resumes and credentials for the proposed program making our Motion for Sanctions not only appropriate but necessary.”[5] She also asserted that the Extended

[4] During the motion hearing, the District also argued that school staff do not often update their resumes and, as such, they do not represent staff credentials accurately.

[5] In her October 11, 2022 response to *Springfield Public Schools' Motion for Protective Order Relative to Parent's Request for Resumes of all SEBS Employees*, Parent wrote, “I requested the District consent to a 40 day extended evaluation with ‘highly qualified personnel’ with expertise areas we require comprehensive clinical data. Student reported he believes he has a ‘different personality named Spike’ …. I explicitly recall raising concern then agreed to consider it if provided resumes and credentials of each staff in the District's SEBS program to ensure they have credentialed staff. [F]urther I agreed to immediate consideration and would respond right away. Hearing Officer agreed wanting to see credentials is a reasonable request. It appears the district is now insulting the integrity of the BSEA conference call by choosing to send an alleged description of the SEBS program, no credentials attached, then shifted the blame.” It should be noted that during the September 26, 2022 conference call, the Hearing Officer

Evaluation is "not in line with the agreement [and is] an extremely manipulative/ legal tactic to undermine Parent's right's[sic] to meaningful input into the development of the Extended Evaluation while withholding credentials of the staff in the program."

Parent requested a hearing on the outstanding motions.[6] On October 14, 2022 the parties argued their respective positions before the Hearing Officer in the presence of a court stenographer. Per Parent's request, the motion hearing was open to the public.[7]

For the reasons set forth below, *Springfield Public Schools' Motion for Protective Order Relative to Parent's Request for Production of Documents* is ALLOWED, and Parent's *Motion to Quash Protective Order* is DENIED; *Parent's Motion for District to Produce Resumes and Credentials for [A]ll [SEBS] Programs, and Clinical Staffs[sic] Credentials, Motion for Sanctions and[/]or Admonishment for Violation of Resolution Meeting* is DENIED, and, given my Ruling on *Parent's Motion for District to Produce Resumes and Credentials for [A]ll [SEBS] Programs, and Clinical Staffs[sic] Credentials, Motion for Sanctions and[/]or Admonishment for Violation of Resolution Meeting, Springfield Public Schools' Motion for Protective Order Relative to Parent's Request for Resumes of all SEBS Employees* is moot and is, therefore, DENIED; *Parent's Motions for Sanctions and/or Admonishments for Violations of Knowingly and Intentionally Interfering with the Impartial Due Process Hearing* is DENIED; and Parent's *Motion for Sanctions and[/]or Admonishment for Violation of Resolution Meeting* is DENIED.

I. ISSUES:

This Ruling addresses the following issues:

1. Whether the District is entitled to a Protective Order relative to Parent's Document Request No. 5 seeking "Title IX trainings in the district dating back two years" and

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"agreed" only that District's Counsel should inquire of her client whether the District would be amenable to conducting another extended evaluation.

[6] On October 13, 2022, Parent filed *Parent's Motion to Compel*. This motion was not heard during the motion hearing on October 14, 2022 as the District had not yet had an opportunity to respond. See BSEA Hearing Rule VI (C) ("Any party may file written objections to the allowance of the motion and may request a hearing on the motion within seven (7) calendar days after a written motion is filed with the Hearing Officer and the opposing party, unless the Hearing Officer determines that a shorter or longer time is warranted").

[7] See 34 CFR Section 300.512(c)(2). Prior to the motion session, the District objected to the motion hearing being open to the public. The District asserted that "the allowance for a public hearing is applicable only to hearings, not to motion hearings." Specifically, "while Rule IX A reads, 'Unless the parents request otherwise, the hearing is closed to the public, and all evidence taken at hearing shall remain confidential,' Rule VI D, relating to hearings on motions, does not include this same allowance." Because neither the IDEA nor BSEA Hearing Rules define the term "hearing," I looked to dictionary definitions to determine its meaning. Black's Law Dictionary defines "hearing" as "[a] judicial session … held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying." Black's Law Dictionary (10th ed. 2014). Lay dictionaries define "hearing" similarly. See Merriam-Webster's Collegiate Dictionary (10th ed. 2001) (defining "hearing" as an "opportunity to be heard, to present one's side of a case," or "a listening to arguments"); see also The American Heritage Dictionary of the English Language (5th ed. 2011) (defining "hearing" as "[a] legal proceeding in which evidence is taken and arguments are given as the basis for a decision to be issued, either on some preliminary matter or on the merits of the case"). As the motion session in this matter was "held for the purpose of deciding issues of fact or of law," I overruled the District's objection, and the motion hearing proceeded open to the public.

Document Request No. 6 seeking "redacted Title IX complaint for 2021-2022 school year";
2. Whether sanctions against the District are appropriate for failing to produce the resumes and credentials of SEBS staff in relation to the extended evaluation proposed by the District, or whether the District is entitled to a Protective Order relative thereto;
3. Whether the District should be admonished or sanctioned for "knowingly and intentionally interfering with the impartial due process hearing" by proposing the completed Extended Evaluation Form to Parent indicating SEBS as the location therefor and proposing questions; and
4. Whether sanctions against the District are appropriate for failing to convene a resolution meeting relative to Parent's Amended Hearing Request.

II. PROCEDURAL HISTORY AND RELEVANT FACTS[8]:

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 in school 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. Following a pre-hearing conference, the parties agreed that Student would participate in an extended evaluation during the summer of 2022, which he did. 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:

> "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[;]

[8] The facts contained herein are based on the motions and responses submitted by the Parties as well as documents submitted since the hearing request was filed and are subject to change after hearing. Since no additional exhibits were submitted by the Parties for the purposes of the motion hearing, I have taken administrative notice of all the relevant submissions contained in the administrative file. Also, the facts delineated in prior rulings in this matter are hereby incorporated by reference.

5. Whether the IEP was unilaterally written denying parent rights under IDEA and the 14th [E]qual [P]rotection [A]ct [sic] of the Constitution[;]
6. Whether the District denied [S]tudent [a] FAPE though [sic] undue influenceby saying [Student] could only have transportation if she agreed to the unilaterally offered placement that is not appropriate[; and]
7. Whether the District owe[s] [Student] compensatory services."

7. 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."
8. The BSEA's Recalculated Notice of Hearing scheduled the hearing date for October 21, 2022.[9]
9. To date, the parties have participated in 6 conference calls with the Hearing Officer.
10. On September 15, 2022, Parent sent the District her discovery requests, seeking the following:

"1. Emails regarding [Student], [Student's Parent], [Advocate] in his case dating back two years from today.
2. Text messages regarding [Student], [Student's Parent], [Advocate] dating back two years
3. Redacted IEP's[sic] for all students in the Springfield Kiley SEBBS[sic] program
4. Ms. Harris's Title IX certification
5. Title IX trainings in the district dating back two years
6. [R]edacted title IX complaints for 2021-2022 school year
7. [C]opy of student access log for his special education file[.]"

11. On September 19, 2022, the District filed the instant *Motion* seeking a protective order relative to Requests No. 5 and 6.
12. On September 20, 2022, in her *Ruling on Springfield Public Schools' Motion to Dismiss*, the undersigned Hearing Officer dismissed Parent's 14th 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.
13. During a conference call on September 26, 2022, Parent indicated that Student has "revealed new information" and now requires another extended evaluation at a therapeutic setting in order to conduct a "clinical psychological evaluation." Via letter dated same, the District agreed to "accommodate an extended evaluation at SEBS during which time one of its clinicians would be able to complete a clinical evaluation of [Student]."
14. In response, on the same day, Parent's advocate sent District's counsel an email in which she wrote, "Please send me the resumes of all SEBS employees."
15. On September 27, the District's counsel sent Advocate an email that described the SEBS program and indicated that the teachers in the program are special education teachers.

[9] The hearing has since been postponed again for good cause until November 27, 2022.

16. On or about September 28, 2022, the District informed Parent that the extended evaluation could begin the following Monday at the SEBS program. The District provided Parent with an Extended Evaluation Form dated 10/03/2022 to 12/06/2022. The Form indicated that the extended evaluation is intended to answer the following questions:

> "1. Does [Student] engage in sexualized behavior in the SEBS Program?
> 2. How does [Student] engage with his peers in the SEBS Program?
> 3. How does [Student] respond to adult directions and requests in the SEBS Program?
> 4. What services and supports does [Student] need to make meaningful progress in the SEBS Program?
> This information will be gathered through an Educational Assessment and a clinical assessment completed by staff/evaluators at Springfield Public Schools. Data will be collected on sexualized behaviors and non-compliance via the system in place by the SEBS program."

17. Parent has yet to respond to the Extended Evaluation Form formally "because Springfield is intentionally withholding resumes and credentials."
18. Via email dated October 4, 2022, the Hearing Officer wrote to the Advocate and copied District counsel as follows: " I also note that the extended evaluation has not been raised as an issue in the initial hearing request or the amended hearing request. In order to allow me to rule on the motions relative to the extended evaluation, can you please file an amendment indicating these additional claims?" The Advocate responded in the affirmative, but, to date, no amendment to the Amended Hearing Request has been filed.[10]

II. LEGAL STANDARDS AND APPLICATION OF LEGAL STANDARDS:

A. DISCOVERY ISSUES:

1. Legal Standards

The *Hearing Rules for Special Education Appeals* (BSEA Hearing Rules) allow discovery in BSEA proceedings. Rule V(A) advises that "the parties are encouraged to exchange information cooperatively and by agreement prior to the hearing." Additionally, parties can request of other parties that they produce documents or answer up to 25 interrogatories within thirty (30) calendar days of being served such requests, unless a Hearing Officer orders otherwise.[11] Where the information or the documents requested are "not subject to any sort of privilege, the accessibility of the documents requested and their relevance to the dispute may militate in favor or against production."[12] Rule V(B)(1) of the *BSEA Hearing Rules* provides that

> "[a]ny party may request any other party to produce or make available for inspection or copying any documents or tangible things not privileged, not

[10] During the motion hearing, the Advocate reiterated her intention to file an Amended Request for Hearing.
[11] See BSEA Hearing Rules V(B)(1) and (2).
[12] *In Re: Dorian and Waltham Public Schools (Ruling),* BSEA # 17-02306 (Reichbach, 2017).

> supplied previously, and which are in the possession, custody, or control of the party upon whom the request is made."

With respect to the scope of discovery, the BSEA looks to Rules 26(b)(1) of both the Massachusetts and Federal Rules of Civil Procedure for guidance. Specifically, Massachusetts Rule 26(b)(1) provides that

> "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party…It is not ground for objection that the information sought will be inadmissible at the trial if…[it]…appears reasonably calculated to lead to the discovery of admissible evidence."

Federal Rule of Civil Procedure Rule 26(b)(1) allows discovery of

> "…any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues…, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information…need not be admissible in evidence to be discoverable."

The BSEA has interpreted the applicable discovery provisions liberally, to enable parties to thoroughly prepare for hearing or otherwise resolve the dispute.[13]

When appropriate, the applicable rules impose limits on discovery. Objections to any discovery requests can be made within 10 calendar days of service of the request, or parties can move for a protective order within that timeframe.[14] BSEA Hearing Rule V(C) states that the "[p]rotective orders may be issued to protect a party from undue burden, expense, delay, or as otherwise deemed appropriate by the Hearing Officer. Orders of the Hearing Officer may include limitations on the scope, method, time and place for discovery or provisions protecting confidential information."[15]

Furthermore, 801 CMR 1.01(8)(i)[16] authorizes parties who do not receive some or all the discovery responses or answers requested to file a Motion for an Order Compelling Discovery. Where a party's Motion to Compel has been granted and the other party fails, without good cause, to obey that order to provide or permit discovery, the Massachusetts Standard Rules of Adjudicatory Practice and Procedure permit a Hearing Officer to exercise discretion in imposing sanctions. In these circumstances, "the Presiding Officer before whom the action is pending may make orders in regard to the failure as are just, including . . . [a]n order refusing to allow the disobedient Party to support or oppose designated claims or defenses, or prohibiting him or her from introducing evidence on designated matters."[17] In the words of the First Circuit Court of Appeals, "the trial judge has an independent responsibility to enforce the directives he has laid

[13] See *In Re: Student v. Andover Public Schools*, BSEA # 17-06174 (Figueroa, 2017).
[14] See BSEA Hearing Rule V(C).
[15] Similarly, Rule 26(c) of both the Massachusetts and Federal Rules of Civil Procedure allow for protective orders "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."
[16] Pursuant to the Scope of the Rules section introductory to 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*."
[17] 801 CMR 1.01(8)(i)(2).

down for the case… . If he or she sets a reasonable due date, parties should not be allowed casually to flout it or painlessly to escape the foreseeable consequences of noncompliance."[18]

2. Application of Legal Standard:

a. The District Is Entitled To A Protective Order Relative To Parent's Document Request No. 5 Seeking "Title IX Trainings In The District Dating Back Two Years" And Document Request No. 6 Seeking "Redacted Title IX Complaint For 2021-2022 School Year."

The instant case concerns, in part, a dispute between Parent and the District over whether the program proposed by Springfield is appropriate for Student and whether the District denied Student a FAPE by failing to conduct a Title IX investigation.[19] As part of its discovery, Parent requested that the District produce "Title IX trainings in the district dating back two years" (Request No. 5) and "redacted Title IX complaint[s] for 2021-2022 school year" (Request No. 6). Although the BSEA has interpreted the Massachusetts and federal discovery provisions liberally,[20] Parent's request must still be relevant.[21] Even if I view Parent's discovery requests generously, I cannot find that whether the District conducted Title IX trainings over the last 2 years (nor the content thereof) is even remotely relevant to the central issues in this case. Similarly, I do not find persuasive Parent's argument that "redacted complaints are as relevant as requesting redacted IEP's [sic] related to issues in the Hearing." In fact, I cannot find that the "redacted Title IX complaint[s] for 2021-2022 school year" are at all relevant, as the recently issued *In Re: Student v. Springfield Public Schools (Ruling on Springfield Public Schools' Motion to Dismiss),* BSEA # 2208440 (Kantor Nir, September 20, 2022) dismissed Parent's Title IX claims (including any systemic Title IX claims) as not within the jurisdiction of the BSEA. The only surviving claim is that the District's failure to conduct a Title IX investigation in this matter resulted in a denial of a FAPE to Student. Because the District's Title IX trainings and the content of other complaints or investigations are irrelevant to the issues in this case, the District's *Motion for Protective Order Relative to Discovery Request Nos. 5 and 6* is **ALLOWED**, and Parent's *Motion to Quash* is **DENIED**.[22]

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[18] *Legault v. Zambarano*, 105 F.3d 24, 28 (1st Cir. 1997); see *John's Insulation v. L. Addison & Assoc.*, 156 F.3d 101, 109 (1st Cir. 1998) ("It is axiomatic that a party may not ignore a district court order with impunity"); *In Re: Medford Public Schools Ruling Regarding Student's Motions for Discovery Sanctions),* BSEA # 03-0033 (Crane, 2003).

[19] See *In Re: Student v. Springfield Public Schools (Ruling on Springfield Public Schools' Motion to Dismiss),* BSEA # 2208440 (Kantor Nir, September 20, 2022).

[20] See *Andover Public Schools*, BSEA # 17-06174 (Figueroa, 2017).

[21] See Fed. R. Civ. Pro. Rule 26(b)(1).

[22] During the motion session, Parent cited to *Thomas v. Springfield Sch. Comm*., 59 F. Supp. 3d 294 (D. Mass. 2014) as grounds for her assertion that the Title IX trainings are relevant to the issue of a denial of a FAPE. In *Thomas*, the parent of a learning-disabled middle school student who was sexually harassed and assaulted by another student brought an action against the principal, superintendent, director of pupil services, school committee, and school district, pursuant to § 1983, Title IX of Education Amendments, Title II of Americans with Disabilities Act (ADA), and certain provisions of Massachusetts law. She asserted that their mishandling of peer-to-peer harassment deprived the student of educational opportunities and her civil rights. Both parties moved for summary judgment. The District Court held, in part, that a genuine issue of material fact existed as to the deliberate indifference element, precluding summary judgment for the school committee and the school district on the Title IX claim; that the defendants did not fail to accommodate student's disability during the relevant time periods; and that, with regard to the claim under Title II of ADA, the peer-to-peer harassment was not based on student's disability. See 59 F. Supp.

b. The District Is Not Required To Produce The Resumes And Credentials Of SEBS Staff For The Purpose Of The Proposed Extended Evaluation.

I note at the outset that Parent failed to serve her discovery request in accordance with BSEA Hearing Rules V(B)(1) and (2). Nevertheless, accepting her email as a discovery request, I find that neither a motion to compel nor an order for sanctions is appropriate at this time.

With regard to Parent's request to compel production of SEBS staff credentials and resumes, as articulated in *Parent's Motion for District to Produce Resumes and Credentials for [A]ll [SEBS] Programs, and Clinical Staffs [sic] Credentials,* I find that I cannot compel the production of documents relative to an issue that is not before me,[23] and the issue of whether SEBS is an appropriate location for the second extended evaluation of Student has not been raised in the

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3d at 309.

It is unclear how *Thomas* supports Parent's position in the present matter. First, at hearing, Parent referenced the Court's finding that

> "[g]iven the information available to the Springfield Defendants concerning RJ, BW, and the May 2009 incident, it was unreasonable to take no steps during the 2009–2010 school year to prevent RJ from engaging in further nonconsensual sexual contact with BW. Taking no steps is inclusive of the failure to give the teacher any notice or instruction to heighten her awareness of possible issues involving RJ and BW during the 2009–2010 school year. A reasonable jury crediting the evidence before the court could conclude the choices by the Springfield Defendants demonstrated deliberate indifference to RJ's harassment of BW. The court therefore denies Defendants' motion as to the Title IX claims against the Springfield Defendants." *Id*., 59 F. Supp. 3d at 304.

Yet this portion of the Court's decision is relevant to Title IX claims, the counterpart to which have already been dismissed in the present matter by way of my *Ruling on Springfield Public Schools' Motion to Dismiss*. In addition, in *Thomas*, the parent argued that the student's loss of educational opportunities was "by reason" of her disability. Nevertheless, the Court found that the parent failed to provide any facts suggesting that the school failed to supervise the student or denied the parent's request for additional accommodations in the student's IEP because of a disability-based animus and granted the school district's motion for summary judgment as to the ADA claim. See *id*., 59 F. Supp. 3d at 306–07. Here, Parent has not made any such allegations nor asserted any facts in support thereof. Even if she had, it is still unclear how or why the requested "Title IX trainings in the district dating back two years" (Request No. 5) and the "redacted Title IX complaint[s] for 2021-2022 school year" (Request No. 6) could possibly be relevant.

Also at the motion hearing, Parent argued that there has been a "pattern in the District of not conducting Title IX investigations [relative to Student] that resulted in a denial of FAPE." Parent indicated that she would be willing to limit Discovery Request No. 5 to the trainings received by those staff who worked with Student over the past 2 years and Document Request No. 6 to redacted Title IX complaints arising at the schools which Student attended. To date, no amended discovery requests have been submitted. Nor do I find that such changes to the Discovery Requests would make them any more relevant or alter my Ruling.

[23] See Mass. R. Civ. Pro. 26(b)(1) ("[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action") (emphasis added) and Fed. R. Civ. Pro. 26(b)(1) (allowing discovery of "…any nonprivileged matter that is relevant to any party's claim or defense") (emphasis added); see also 34 CFR Section 300.511(d) ("The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise"). During the motion hearing, Parent argued that the issue of the extended evaluation should be "grandfathered in" because the District proposed the evaluation during the course of an ongoing due process proceeding. Parent's argument is unpersuasive as BSEA Hearing Rule 1B specifies that the "party requesting a hearing shall not be allowed to raise issues at the hearing that were not raised in the hearing request unless the other party agrees or the hearing request is amended in accordance with state and federal law."

initial or the Amended Hearing Request.[24] In addition, while Parent seeks sanctions within *Parent's Motion for District to Produce Resumes and Credentials for [A]ll [SEBS] Programs, and Clinical Staffs [sic] Credentials*, I note that although Hearing Officers have been willing to sanction parties that fail to comply with discovery orders,[25] in the instant matter, I have yet to issue any discovery order with which the District has failed to comply, a prerequisite for sanctions.[26] Therefore, *Parent's Motion for District to Produce Resumes and Credentials for [A]ll [SEBS] Programs, and Clinical Staffs[sic] Credentials* is **DENIED.**

Because I denied *Parent's Motion for District to Produce Resumes and Credentials for [A]ll [SEBS] Programs, and Clinical Staffs[sic] Credentials*, the District's *Motion for Protective Order Relative to Credentials* is moot and is, therefore, also **DENIED**.[27]

C. PARENT'S MOTION FOR INTERFERING:

1. Legal Standard for Extended Evaluations

Massachusetts regulations set out the legal standard for extended evaluations. Specifically, 603 CMR 28.05(2)(b) states that if evaluation information is inconclusive such that "the Team finds the evaluation information insufficient to develop an IEP, the Team, with parental consent, may agree to an extended evaluation period." The extended evaluation is "not considered a placement."[28]

2. Application of Legal Standard

a. <u>No Sanctions Are Appropriate Against The District For Proposing To Parent An Extended Evaluation Form Indicating SEBS as the Location and Delineating the Questions To Be Answered.</u>

Parent asserts that the District's "unilateral development" of the Extended Evaluation Form interfered with due process and "undermine[d] Parent's right's [sic] to meaningful input into the development of the Extended Evaluation while withholding credentials of the staff in the program." In addition, Parent's *Motion for Interfering* alleges racial discrimination by the District against Student and other students of color. In response, the District argues that there is no "procedural violation on the part of the District and/or Dr. Morris"[29] and that "for the

[24] In her Amended Request for Hearing, Parent challenges the appropriateness of the SEBS program as a placement for Student, yet the only discovery request in connection therewith is Parent's Discovery Request No. 3 seeking redacted IEPs of SEBS students. Parent's argument in this matter fails because the extended evaluation, to which Parent refers as a "proposed placement," is not, in fact, a placement. See 603 CMR 28.05(2)(b). I note that my ruling on Parent's motion would likely have been different had Parent made the request in the context of the District's proposal for SEBS as a placement rather than in the context of the extended evaluation.

[25] See, for example, *In Re: Medford Public Schools Ruling Regarding Student's Motions for Discovery Sanctions),* BSEA # 03-0033 (Crane, 2003) (where the District failed to comply with the substance of three discovery orders, the Hearing Officer "turned to sanctions as the only available recourse to remedy the situation").

[26] See 801 CMR 1.01(8)(i)(2).

[27] I note that the outcomes of both motions may have been different had Parent amended her Request for Hearing to include the issue of the extended evaluation.

[28] 603 CMR 28.05(2)(b).

[29] During the motion hearing, the District also argued that if Parent were not satisfied with the questions delineated on the Extended Evaluation Form, had she made a request, "that could have been easily remedied".

advocate to raise issues of racial discrimination in her motion without any alleged facts that even hint at any kind of discrimination whatsoever, is inflammatory and inappropriate."

I reiterate that neither issue relating to the extended evaluation (i.e., appropriateness of SEBS as a location for the extended evaluation and the denial of parental participation in developing the extended evaluation) is before me at this time. Nor is Parent's claim of racial discrimination. None of these issues was included in the initial Hearing Request or the Amended Request for Hearing; as such, the District has not been provided formal notice of them as contested issues for hearing.[30] If Parent wishes to challenge the appropriateness of the SEBS program for an extended evaluation or the manner in which it was proposed (or assert any additional claims), she may request a hearing in accordance with state and federal law[31] and/or amend her hearing request in accordance with BSEA Hearing Rule I (G). Parent's claims require an evidentiary hearing on the merits. A motion is an inappropriate vehicle via which to assert substantive and procedural violations under the IDEA.[32] Therefore, Parent's *Motion for Interfering* is **DENIED**.

D. PARENT'S SECOND MOTION FOR SANCTIONS FOR FAILING TO CONVENE A RESOLUTION MEETING:

1. Legal Standard for Resolution Meetings

The Individuals 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.[33] When a party files an amended due process complaint, the timelines for the resolution meeting begin again with the filing of the amended complaint.[34] 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.[35] The purpose of this requirement is to ensure that the parties have an opportunity to resolve the parent's complaint before engaging in due process.[36]

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[30] See *Brookline Public Schools,* BSEA #2202527 (Kantor Nir, 2022) ("The IDEA requires the party initiating a due process hearing to file a complaint and provide notice of this complaint to the other party and the state educational agency. In part, the complaint must include a description of issue(s), including facts relating to such issue(s) and a proposed resolution to the dispute, to the extent known and available to the party at the time. This provides the opposing party with notice as to the issues for hearing") (internal citations omitted).

[31] See 603 CMR 28.08(3)(a) ("A parent or a school district, except as provided in 603 CMR 28.08(3)(c) and (d), may request mediation and/or a hearing at any time on any matter concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities. A parent of a student with a disability may also request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973, as set forth in 34 CFR §§104.31-104.39").

[32] See 34 CFR 300.508(b) (stating that a due process complaint must include, in part, a description of the nature of the problem concerning the identification, evaluation, educational placement of the child, or the provision of FAPE, including facts relating to such problem and a proposed resolution of the problem to the extent known and available to the party at the time).

[33] See 20 USC 1415(f)(1)(B); 34 CFR 300.510(a).

[34] 34 CFR 300.508 (d)(4); 71 Fed. Reg. 46,698 (2006).

[35] See 34 CFR 300.510(a)(3).

[36] 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).

The burden is on the local educational agency to convene the resolution meeting.[37] 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.[38] If the district fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process 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.[39]

2. *Application of Legal Standard*

a. No Sanctions Against The District Are Appropriate For Failing To Convene A Resolution Meeting Relative To Parent's Amended Hearing Request.

BSEA decisions have consistently held that the IDEA and the federal regulations discuss penalties that may be imposed upon parents regarding the resolution session, but provide for no such penalty on a school district that fails to convene the session, other than relieving the parent from his/her duty to participate as a pre-requisite to the due process hearing.[40] I explored this issue previously in my September 22, 2022 *Ruling on Springfield Public Schools' Motion to Postpone Hearing and Parent's Motion for Sanctions Ruling in In re: Student & Springfield Public Schools,* BSEA # 2208440 (2022), and I continue to maintain my analysis and determination regarding same in this Ruling. If Parent believes that the District's failure to convene the resolution meeting resulted in a denial of a FAPE to Student or impacted Parent's right to meaningful participation, Parent may so assert in a due process complaint.[41] As such, Parent's request for sanctions against Springfield for any alleged procedural violations for failing to convene a resolution meeting is **DENIED**.

ORDER:

In accordance with my reasoning, *supra:*

1. *Springfield Public Schools' Motion for Protective Order Relative to Parent's Request for Production of Documents* is ALLOWED, and Parent's *Motion to Quash Protective Order* is DENIED;
2. *Parent's Motion for District to Produce Resumes and Credentials for [A]ll [SEBS] Programs, and Clinical Staffs[sic] Credentials, Motion for Sanctions and[/]or Admonishment for Violation of Resolution Meeting* is DENIED, and, given my ruling on *Parent's Motion for District to Produce Resumes and Credentials for [A]ll [SEBS] Programs, and Clinical Staffs[sic] Credentials, Springfield Public Schools' Motion for Protective Order Relative to Parent's Request for Resumes of all SEBS Employees* is also DENIED;

[37] See 34 CFR 300.510(a)(1).
[38] 34 CFR 300.510 (a)(3).
[39] 34 CFR 300.510 (b)(5).
[40] See, e.g., *In re: Student v. Springfield Public Schools (Ruling on Motions for Eight Items of Relief)*, BSEA # 2203555 (Berman, 2022*); Amherst Pelham Regional School District v. Student*, BSEA # 07-2259 and 07-3796 (Figueroa, 2007); *In Re: Ann (Parent's Motion for a Default Judgment)*, BSEA # 06-1175 (Oliver, 2005); *In Re: Mount Greylock Regional School District*, BSEA # 06-6459 (Figueroa, 2006).
[41] *In re: Student v. Springfield Public Schools (Ruling on Motions for Eight Items of Relief)*, BSEA # 2203555.

3. *Parent's Motions for Sanctions and/or Admonishments for Violations of Knowingly and Intentionally Interfering with the Impartial Due Process Hearing* is DENIED; and
4. Parent's *Motion for Sanctions and[/]or Admonishment for Violation of Resolution Meeting* is DENIED.

Both parties are instructed to submit all future filings in accordance with the BSEA Hearing Rules.

So ordered,
By the Hearing Officer,
s/ *Alina Kantor Nir*
Alina Kantor Nir
Date: October 21, 2022