

**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. 2004105

Malden Public Schools

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**RULING ON MOTION TO STRIKE SCHOOL'S EXHIBITS**

On August 13, 2020, Parents filed a *Motion to Strike Respondent's [School's] Exhibits* on the grounds that they did not receive the School's exhibit book until August 12, 2020, one day after the date by which the parties were directed to file and exchange exhibits and witness lists. For reasons stated below, the Parents' *Motion* is DENIED.

By order dated June 2, 2020, the parties were directed to exchange and file proposed exhibits and witness lists by close of business on August 11, 2020, which is 5 business days before the hearing date of August 18, 2020. Rule X.A.6 of the Hearing Rules for Special Education Appeals allows, but does not require, a hearing officer to prohibit introduction of documentary exhibits not disclosed to the opposing party at least five business days prior to the hearing.

In the instant case, the School sent the proposed exhibits to Parents via UPS on August 10, 2020 for overnight delivery to Parents on August 11, 2020. On August 11, 2020, the parties learned from the UPS tracking slip that there was a problem with the delivery. There is no evidence that this problem was attributable to, or was in control of, either party. On that day, upon learning of the problem with UPS and that the exhibit book had not been delivered, counsel for the School sent multiple exhibits to Parents via email. Parents received the entire physical exhibit book via UPS on the morning of August 12, 2020, the day following the anticipated delivery date. There has been no showing of prejudice to Parents from less than one full business day's delay in receipt of the School's exhibits. If Parents believe they are prejudiced, however, the hearing officer will entertain a request for a one-day postponement of the first day of the hearing to allow them additional time to review the documents at issue.

**ORDER**

Parents' *Motion to Strike Respondent's Exhibits* is DENIED, subject to the right of Parents to request a one-day postponement as set forth above.

By the Hearing Officer,

*/s/ Sara Berman*

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Sara Berman  
Date: August 14, 2020