

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

In Re: Whitman Hanson RSD

BSEA No. 2007520-C

ORDER AS TO ADMISSION OF ADDITIONAL EXHIBITS

On November 27, 2020, after an evidentiary hearing, the BSEA issued a final decision (*Decision*) in this matter. The Conclusion and Order section of the *Decision* states as follows:

Based on the foregoing, I conclude that the IEP and placement proposed by Whitman-Hanson for the 2020-2021 school year are not appropriate as written but can be made appropriate with the addition of a Teacher of the Deaf, qualified in listening/spoken language, to be responsible for providing the majority of Student's direct instruction. The Teacher of the Deaf shall be available in Student's classroom throughout each school day when Student is present.

On January 18, 2021, Parents filed a *Motion to Order Compliance with Decision*, pursuant to Rule XIV of the BSEA *Hearing Rules*, alleging that the Whitman-Hanson Regional School District (District) failed to fully comply with the above-quoted *Order* because it had not hired a Teacher of the Deaf (TOD) for Student, qualified in listening and spoken language. In response to Parents' *Motion*, the District filed an *Opposition* in which it disputed Parents' claims.

A hearing on the *Motion* was held remotely on February 10, 2021. One of the issues at the hearing was whether or not the District had, in fact, secured a TOD to be available to Student consistent with the terms of the *Decision*. Both parties presented witnesses and documentary evidence relating to this issue. At the conclusion of the

presentation of evidence, both parties rested. Agreeing that time was of the essence, the Parties waived written and oral closing arguments.

On February 11, 2020, one day after the hearing on the *Motion*, the District submitted a letter accompanied by the sworn affidavit of the District's Director of Student Services, Lauren Mathisen, attesting that the District had secured a TOD from out-of-state who would be available to provide Student with 1:1 remote instruction for up to five full days per week. Accompanying the affidavit was the proposed teacher's resume, as well as an email from a contracting agency addressing the proposed teacher's availability. On February 12, 2021, Parents filed an opposition to the District's submission of additional evidence subsequent to the *Motion* session and requested that the hearing officer not consider such evidence.

Later in the day on February 12, 2021, the District filed copies of email correspondence between Ms. Mathisen and Katie Jennings, a TOD employed by the Clarke School, purporting to verify Ms. Jennings' availability to provide instruction to Student on two days per week. Taken together, the exhibits purport to show that the District could provide TOD coverage consistent with the *Decision*. On the same day (February 12, 2021) Parent filed an opposition to consideration of the District's second submission of proposed additional evidence.

For reasons stated below, I decline to accept the District's additional submissions, dated February 11 and 12, 2021.

First, the record for the hearing on the *Motion* closed on February 10, 2021. As stated above, on that date, both parties presented exhibits and witness testimony in support of their respective positions. At the close of the evidence, both parties were asked if they rested, and both parties responded in the affirmative. Moreover, in light of the need for an expeditious ruling on this *Motion*, given that the District did not make a formal proposal for implementation until mid-January 2021, and that nearly 12 weeks after issuance of the *Decision*, Student has yet to attend any preschool program, both parties agreed not to present written or oral closing arguments. Neither party requested that the record be kept open for additional evidence, and neither the parties nor the hearing officer communicated any expectation that the record would be kept open past the date of the hearing on the *Motion*.

Second, I would not be able to accept the District's additional submissions without reopening the hearing on the *Motion* in order to allow Parents the opportunity to cross-examine the affiant and the authors of the other documents sought to be introduced, as well as to present additional evidence related to the limited issues raised by the District's new exhibits. The ensuing delay from scheduling and conducting an additional day of hearing cannot be justified by the possibility of gleaning additional information that may (or may not) contribute to final resolution of this matter. As stated

above, Student already has been prejudiced by the protracted amount of time that has elapsed—nearly 12 weeks—between the date the *Decision* was issued and the date of this *Order*.

Based on the foregoing, the request of the Whitman-Hansen Regional School District to consider the above-referenced documents (Affidavit of Lauren Mathisen with attachments, email chain between Lauren Mathisen and Katie Jennings) in issuing a ruling on the *Parents' Motion to Order Compliance* is DENIED.

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By the Hearing Officer:

/s/ Sara Berman

Dated: February 17, 2021

Sara Berman