

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

**In Re:** Student v.  
Acton-Boxborough Regional School District

**BSEA # 2103253**

**Ruling on Parent’s and Acton-Boxborough Regional School District’s  
Motions for Directed Verdict**

This matter comes before the Hearing Officer on two *Motions for Directed Verdict* (together, *Motions*) made and argued orally by Parent and by Acton-Boxborough Regional School District (Acton-Boxborough or District) on the first day of Hearing, June 2, 2021.

The first *Motion* was made by Parent after presenting two witnesses and then resting her case. The second *Motion* was made by Acton-Boxborough immediately after Parent rested and made her Motion. The Parties argued their *Motions* orally on June 2, 2021, after which both *Motions* were denied. The District requested a written Ruling, at which point the Parties were instructed to submit their *Motions/Arguments* in writing.

The Parties were orally advised that the initial Ruling denying both Motions for Directed Verdict remained in effect pending re-consideration and a final Ruling following review of their written submissions. Consistent with an Order issued on June 4, 2021, June 11, 2021 was established as the deadline for the Parties to renew their *Motions* and submit their arguments. On June 11, 2021, Parent filed Parent’s and Student’s Renewed Motion for Directed Verdict/Summary Judgment on Procedural Violations and Opposition to School District’s Motion for Directed Verdict. The District also submitted a Motion for Directed Verdict on June 11, 2021.

Upon consideration of the evidence and the Parties’ oral and written arguments, both Parent’s and the District’s Motions for Directed Verdict are **DENIED**, as discussed below.

**I. Factual background and Relevant Procedural History:**

Following presentation of two witnesses, to wit: Parent and the District’s Assistant Superintendent, Parent moved for a Directed Verdict, arguing that the District had failed to convene Student’s Team in a timely fashion and stating that she was now only looking for a declaration from the BSEA that the District had violated Parent’s/Student’s procedural due process rights and sought training of the District’s staff in this area. Up to this point (and in consideration of the portions of her Hearing Request that survived a Ruling on the District’s

Motion to Dismiss issued on March 16, 2021<sup>1</sup>), Parent’s Hearing Request alleged that Student had been traumatized to such an extent that he was unable to attend school for a prolonged period of time, and she asserted that the District did not convene the Team to address Student’s evolving needs.<sup>2</sup> According to Parent’s Hearing Request and submissions prior to filing her Motion, the District’s failure to convene the Team to discuss these issues denied him access to a free and appropriate public education (FAPE), for which Student was owed compensatory educational services from the time when the District should have identified Student’s failure to receive a FAPE (early January 2020) to the time when he was enrolled in a different school/district in October of 2020<sup>3</sup>. (At Hearing Parent testified that she relocated to Alabama sometime after June of 2020 and that she was there during a portion of the fall of 2020. The precise length of her relocation is unclear).

Additionally, in her Hearing Request, Parent specifically sought a “a declaration of procedural and substantive violations”, and a declaration that she had exhausted her administrative remedies so that she could proceed to court on her non-FAPE related claims. Lastly, Parent sought any and all other remedies to which she and Student would be entitled.

Later, during a Pre-hearing Conference on March 17, 2021, Parent further argued constructive rejection of Student’s IEP. She also noted the District’s failure to reconvene the Team in a timely fashion, which failure violated Student’s procedural due process rights. According to Parent, this failure, combined with the January 2020 events and Student’s subsequent physical, mental and emotional distress (ignored by the District), and deprivation of Student’s education, amounted to a substantive denial of FAPE entitling Student to compensatory services.

Parent did not amend her Hearing Request prior to Hearing to forgo the remedies sought in her Hearing Request or at the Pre-hearing Conference. Thus, at all times until the first day of Hearing prior to Parent resting on presentation of her case, Parent sought a finding of procedural *and substantive violations*, requested compensatory services and a determination that she had exhausted administrative remedies as well as all other unspecified remedies to which Student would be entitled.

During oral argument in response to Parent’s *Motion*, the District conceded that it failed to convene Student’s annual Team meeting in a timely fashion, but it disputes the remainder of Parent’s allegations, and further argued that this failure did not amount to a denial of FAPE

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<sup>1</sup> A Ruling issued on March 16, 2021 addressing Acton-Boxborough’s Motion to Dismiss narrowed the issues for Hearing allowing only Parent’s claims involving alleged procedural and substantive violations of the IDEA and Section 504 of the Rehabilitation Act of 1973.

<sup>2</sup> Parent’s allegations included: 1) the District’s failure to convene a Team to consider that Student’s needs had changed as a result of the January 2020 incident involving Parent and a sibling, subsequent visits by the police to her home, or letters issued by Student’s pediatrician involving alleged new diagnoses; and 2) the events and subsequent actions by the District caused Student emotional, physical and mental harm which prevented him from attending school.

<sup>3</sup> At this time, as discussed *infra*, it remains unclear in the record whether or not the Student’s educational placement in October, 2020 was at another school within Acton-Boxborough or in another district.

for Student. Acton-Boxborough argued that in December of 2019 it forwarded Parent a consent for evaluation to proceed with Student’s three-year re-evaluation, which Parent did not sign until February 14, 2020.

The District further noted in their supplemental *Motion* that the testimony presented in the hearing was that Student was on a bus when the January 9, 2020 incident involving Parent and sibling occurred, and that he saw the incident in a video shown to him by Parent. The District also argued that it convened meetings to attempt to have Student return to school after the January 9, 2020 incident, albeit not “Team” meetings. The Team was convened on February 14, 2020 and a new IEP was proposed, although at that time the IEP had expired on January 6, 2020. This IEP was never accepted or rejected by the Parent, thus, according to the District, “stay put” applied to the Student’s IEP that had expired on January 6, 2020.

School closed on March 13, 2020 as a result of the COVID-19 State health emergency. The record lacks specific information as to Student’s participation in remote services or which services were offered for the period between March and June 2020. The record also lacks specific information as to the services offered to Student from January 6, 2020 to March 13, 2020. Student relocated to Alabama sometime after June 2020 and into the fall of 2020. Little information was provided either as to the length of the relocation or what services if any were provided Student (assuming that he attended school in Alabama) or as to whether his IEP was presented/ modified/ amended/re-drafted until his return to the District on or about December of 2020, too. Similarly, there is no information as to whether any evaluations were conducted in Alabama.

What services were made available and ultimately offered Student upon his return in December 2020, until the IEP developed in February 2021 was accepted, is also uncertain. The District conducted evaluations following Student’s return, convened the Team in February of 2021 and proposed a new IEP which Parent fully accepted in March of 2021.

## **II. Legal Standard on a Motion for Directed Verdict:**

The BSEA *Hearing Rules for Special Education Appeals* do not include a specific Rule addressing directed verdicts, however, 801 CMR 1.01(g)(7)(1), applicable in BSEA administrative proceedings, allows a Respondent to move to dismiss a case at the completion of the Petitioner’s presentation of the evidence because of the latter’s failure to establish his/her case based on the evidence, the law, or both. The standard embodied in 801 CMR 1.01(g)(7)(1) is akin to Massachusetts Rule of Civil Procedure 50(a), which addresses directed verdicts, and on which I rely for interpretation.

A party may move for directed verdict at the close of the evidence offered by an opponent.<sup>4</sup> That is, a directed verdict may only be requested by the opposing party at the conclusion of the opponent’s case, not by the party presenting the evidence at the conclusion of his/her own case. A motion for a directed verdict may be granted “only where, construing the evidence

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<sup>4</sup> Mass. R. Civ. P. 50(a).

most favorably to the plaintiff, it is still insufficient to support a verdict in his favor.”<sup>5</sup> The test in a motion for directed verdict is whether anywhere in the evidence, regardless of whatever source it derives from, and viewed in the light most favorable to the non-moving party, any combination of circumstances could be found from which a reasonable inference in favor of the non-moving party may be drawn.<sup>6</sup> For inferences to be considered reasonable, they must be based on “probabilities rather than possibilities” and not be the result of “mere speculation and conjecture.”<sup>7</sup> Massachusetts Rule of Civil Procedure 50(a) is akin to Federal Rule of Civil Procedure 50(a) which uses the term “judgment as a matter of law” instead of “directed verdict”. Because the rules are essentially the same, the Massachusetts Court of Appeals has noted that in addressing Mass. R. Civ. P. 50(a) state courts should be guided by the construction the federal courts have given to the federal rule.<sup>8</sup>

### **III. Discussion:**

#### **A. Parent’s Motion for Directed Verdict**

Parent argues that her *Motion* should be granted on the basis that the District’s procedural violations denied Student’s right to a FAPE and that at the conclusion of presentation of her case, she modified the remedy sought to request only a declaration of the District’s procedural violation and training for the district’s staff.<sup>9</sup>

According to Parent, the specific procedural violations occurred when the District failed to reconvene Student’s Team prior to the January 6, 2020 expiration of his prior IEP. Parent asserts that this failure, and its failure to discuss why Parent refused to sign the evaluation consent form, constituted a procedural violation that denied Student a FAPE.<sup>10</sup> Parent argues that the expired IEP no longer provided Student educational benefit. Moreover, the Team was not convened to discuss Student’s new disabilities resulting from the trauma associated with the January 9, 2020 incident.

Parent contends that in failing to convene the Team, the District also deprived her of the opportunity to partake in the decision-making process regarding provision of FAPE to Student.<sup>11</sup>

It is well established that procedural violations can amount to a deprivation of FAPE if the procedural irregularity: 1) impeded student’s right to FAPE; 2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision

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<sup>5</sup> *Alholm v. Wareham*, 371 Mass. 621, 627 (1976).

<sup>6</sup> *Berskshire Armored Car Serv., Inc. v. Sovereign Bank of New England*, 837 N.E.2d 290 (Mass. 2005).

<sup>7</sup> *Alholm*, 371 Mass. at 627, 628 (internal citations omitted).

<sup>8</sup> *O’Shaughnessy v. Besse*, 7 Mass. App. Ct. 727 (1979).

<sup>9</sup> According to Parent, the appropriate award of compensatory education for Student is training to the District’s staff. (While this may be part of the ultimate determination, this is not the only claim or remedy sought by Parent in her Hearing Request).

<sup>10</sup> Parent’s *Motion* at 5.

<sup>11</sup> Parent’s *Motion* at 1.

of a FAPE to the student; or 3) caused a deprivation of educational benefit to the student. 34 CFR 300.513(a)(2). Parent states that the procedural violations here, involving timely request for parental consent to conduct Student's three-year re-evaluation and timely reconvening of the Team, impeded Student's right to a FAPE and caused deprivation of educational benefit. Parent asserts that because of the procedural violations Student remained "stuck on a stagnant IEP that did not allow him to make progress or to derive educational benefit"<sup>12</sup> until mid-February of 2021 when a new IEP was offered and soon thereafter, accepted and implemented. (I note that an earlier IEP was offered in February 2020. Parent took no action regarding this IEP.)

Parent's second allegation involves the District's deprivation of Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, which right, she argues, is substantive.<sup>13</sup> Thus, Parent seeks a directed verdict in her favor on the basis that the uncontradicted testimonial evidence of Parent and the documentary evidence demonstrate that the District's failure to convene the Team prior to February 14, 2020 and offer Parent meaningful participation in a Team meeting resulted in a denial of FAPE.<sup>14</sup>

The District concedes that it had violated Student's procedural due process rights in failing to convene his annual review Team meeting before the IEP expired on January 6, 2020, but denied any impact to Student's receipt of FAPE.<sup>15</sup>

Parent's Motion for Directed Verdict cannot be granted as a matter of law. A motion for directed verdict is appropriate only when such motion has been made by the Respondent at the close of the Petitioner's presentation of the evidence.<sup>16</sup> Mass. Civ. P. Rule 50 is clear that a motion for directed verdict can only be made by an opponent at the close of the opposing party's evidence, or after both parties have been heard, but not by the Petitioner at the close of the presentation of his/her own case.

In *Rhode Island Hosp. Trust Nat'l Bank v. Varadian*, the Court stated that a party may move for a directed verdict at the close of the evidence offered by an opponent or at the close of *all* the evidence.<sup>17</sup> (Emphasis supplied). Here, Parent's motion for directed verdict is not proper since the District has not presented all its evidence. A party may not expect to prevail on a motion for directed verdict on the basis that because the uncontradicted evidence presented by the moving party had or could potentially satisfy the preponderance of the evidence standard, the opposing party should not be heard. In determining whether a motion for directed verdict should be granted, the Hearing Officer will review the non-moving party's evidence along with any evidence by the moving party that is uncontradicted and

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<sup>12</sup> Parent's *Motion* at 3.

<sup>13</sup> Parent's *Motion* at 4.

<sup>14</sup> Parent's *Motion* at 2.

<sup>15</sup> Tr. I 155:12-13.

<sup>16</sup> *Bonofiglio v. Commercial Union Ins. Co.*, 576 N.E.2d 680 (Mass. 1991).

<sup>17</sup> *Rhode Island Hosp. Trust Nat'l Bank v. Varadian*, 647 N.E.2d 1174 (Mass. 1995).

unimpeached. The Hearing Officer will not look at whether the moving party will ultimately prevail because the uncontradicted evidence met the preponderance of the evidence standard. As established in *Student v. Worcester Public Schools*, a decision-maker may grant a motion for directed verdict only if the evidence, viewed in the light most favorable to the non-moving party, points *so strongly and overwhelmingly* in favor of the moving party that a reasonable person could conclude only in favor of that moving party.<sup>18</sup>

Here, the opposing party has not been fully heard. Not only is Parent the wrong party to move for directed verdict after presenting her own case, but the record lacks relevant information regarding Student's educational needs at the time of the procedural violations, the impact of not having received an education during the time that he was out of school, or until the procedural violations were remedied, and the extent of the alleged denial of FAPE and its educational impact on Student, such that a determination as to whether Student failed to make progress or derive educational benefit as a result of the procedural violation can be entered. I note that compensatory relief is equitable in nature, and thus one must also consider the District's efforts to mitigate harm to Student in determining whether the District's procedural violations denied Student a FAPE. Additional information from the District is also needed to ascertain the nature and extent of compensatory services to which Student may be entitled.

Lastly, in her written submission Parent argues that her *Motion* may also be interpreted as a motion for summary judgment.<sup>19</sup> Even were the *Motion* to be considered as a Motion for Summary Judgment, it would fail for the reasons discussed above.

Parent's Motion for Directed Verdict is **DENIED**.

#### **B. District's Motion for Directed Verdict:**

The District seeks a directed verdict on the basis that Parent did not present legally sufficient evidence to prove her case.

The District argues that there is no basis for the Hearing Officer to conclude that the procedural violation impeded the Student's right to a FAPE by significantly impeding the Parent's opportunity to participate in the decision-making process or by causing deprivation of educational benefits to Student.<sup>20</sup> The District contends that the procedural inadequacy caused by allowing the IEP to expire was a technical error on its part that lasted for a short

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<sup>18</sup> *Student v. Worcester Public Schools*, BSEA # 09-4367 (Figueroa, January 5, 2015).

<sup>19</sup> A motion for summary judgment may be granted when there is no genuine issue of fact relating to all or part of a claim or defense and the moving party is entitled to prevail as a matter of law. See 801 CMR 1.01(7)(h). Even if summary judgment were to be granted regarding the District's failure to convene the Team in a timely fashion, there are factual disputes regarding its impact on Student and Parent as to Student's access to FAPE requiring additional facts and evidence.

<sup>20</sup> District's *Motion* at 5.

amount of time, that the violation was minimal, and that such violation did not deprive Student of a FAPE.<sup>21</sup>

The District further argues that its Motion should be granted because Parent failed to establish any link between the procedural violation and a denial of a FAPE.<sup>22</sup> The District's Motion therefore turns on whether, as a matter of law, Parent presented sufficient evidence, at the conclusion of the presentation of the evidence, to meet her burden of persuasion. If the evidence presented by Parent is legally insufficient as a matter of law, such that a reasonable person would not find in Parent's favor, the District's Motion can be granted.

In this sense a motion for directed verdict should be granted if the non-moving party does not offer sufficient evidence that allows for equal inferences that are inconsistent concerning a critical fact in the non-moving party's case.<sup>23</sup> Thus, it is not unusual for federal courts, and a majority of state courts, to examine *both* the defendant's and plaintiff's evidence when deciding whether to grant a judgment as a matter of law<sup>24</sup>.

In *Pennsylvania Railroad v. Chamberlain*, 288 U.S. 333 (1933), the U.S Supreme Court concluded that there was no legally sufficient evidentiary basis to support a verdict for the plaintiff, but only after considering the substantial evidence that the defendant had offered.<sup>25</sup> In determining whether the evidence that the non-moving party offered is legally sufficient, the court must ask whether the evidence is such that without weighing the credibility or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that a reasonable person could have reached.<sup>26</sup> Here, the District relies on *Student v. Winchester Public Schools* to argue that the procedural violations were *de minimis* and did not result in the Student's right to a FAPE.<sup>27</sup> However, the District's reliance on *Winchester Public Schools* is misplaced. In that case, the Hearing Officer concluded that the alleged violations were *de minimis*, did not interfere with Parent's or Student's ability to participate in the Team process, and did not deprive Student of FAPE *after* both parties had presented all the evidence and had filed written closing arguments.

In the case at bar, the Parent presented uncontradicted evidence that the District did not convene the Team in a timely fashion and did not consider Parent's allegations regarding potential new disabilities resulting from the January 9, incident, and relied on the documentary evidence to assert that Student's needs *had* changed. Parent also testified that delays in the delivery of services occurred, that services were not offered, and that Student was harmed by the District's actions. Finally, Parent testified that by not convening the

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<sup>21</sup> District's *Motion* at 5.

<sup>22</sup> District's *Motion* at 6.

<sup>23</sup> *Pennsylvania Railroad v. Chamberlain*, 288 U.S. 333 (1933).

<sup>24</sup> *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000).

<sup>25</sup> *Glannon, Perlman, Raven-Hansen.*, *Civil Procedure: A Coursebook* 1089-1090 (3d ed. 2017).

<sup>26</sup> *O'Shaughnessy v. Besse*, 389 N.E.2d 1049 (Mass. Ct. App. 1979).

<sup>27</sup> District's *Motion* at 6.

Team until approximately 6 weeks following expiration of the 2019-2020 IEP and then not issuing an IEP until sometime later, her rights were also violated.

The District may present evidence regarding what services, if any, were available to Student consistent with stay-put, to which he was entitled between January of 2020 and February of 2021 when the new IEP was proffered. (Additional information missing from the record is noted in the Factual Background section of this Ruling.) However, at this time, such evidence has yet to be provided by the District. At present, the District has not presented unimpeached and uncontradicted evidence to persuade the Hearing Officer that there was no link between the District's procedural violation and the Student's denial of a FAPE.

The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.<sup>28</sup> However, upon filing a motion for directed verdict, the District has the burden to persuade the Hearing Officer that in viewing the evidence in the light most favorable to the Parent, and drawing all inferences that may be drawn from the evidence in her favor, no reasonable person would find for Parent. That is not the case here. Thus, the District's Motion for Directed Verdict must be **DENIED**.

#### IV. ORDERS:

- Parent's Motion for Directed Verdict is **DENIED**.
- Acton-Boxborough Regional School District's Motion for Directed Verdict is **DENIED**.
- The Hearing in this matter will proceed remotely on June 21, 2021 at 10:00 a.m., with the presentation of the District's case.

So Ordered by the Hearing Officer,

*/s/ Rosa I. Figueroa*

Rosa I. Figueroa

Dated: June 17, 2021

I would like to express my appreciation to Hector Pagan, BSEA legal intern, for his assistance with this Ruling.

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<sup>28</sup> *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).