

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

In re: Nina¹

BSEA: 1907157

**RULING ON PARENTS' MOTION TO ALLOW PARENT TO CHAPERONE
FIELD TRIP**

This matter comes before the Hearing Officer on the *Motion to Allow Parent to Chaperone Field Trip* [“*Motion*”] filed by Parents on April 5, 2019. In response to Parents’ *Motion*, Mendon-Upton Regional School District (“MURSD” or “the District”) filed a *Field Trip Safety Plan* on April 23, 2019. Several responses were filed by each party, described in more detail below. Neither party requested a hearing on the *Motion*, and as testimony or oral argument would not advance the Hearing Officer’s understanding of the issues involved, this Ruling is being issued without a hearing pursuant to Bureau of Special Education Appeals *Hearing Rule VII(D)*. For the reasons set forth below, Parents’ *Motion to Allow Parent to Chaperone Field Trip* is hereby DENIED.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY²

Nina, a seven year-old first grade student, is on a plan pursuant to Section 504 of the Rehabilitation Act of 1973 (“504 plan”) due to her allergies to peanuts and tree nuts. In combination with her asthma and allergic rhinitis, “[t]he severity of her allergies to these foods is such that strict avoidance is required and exposure can lead to life threatening reactions such as anaphylaxis.”³ Her allergist recommends the following provision to help ensure a safe environment for her in schools: teacher and peers washing their hands before entering the classroom, after snacks, and after lunch; ensuring that her teachers do not use the foods she is allergic to for classroom activities; and ensuring that she has the option to be seated at a peanut, tree nut-free lunch table with peers who consume a compatible diet. Moreover, in addition to the implementation of procedures to prevent allergen exposure, the allergist strongly recommends “that there be an emergency response protocols [*sic*] in place, including appropriate school staff trained in epinephrine auto-injector administration, in addition to the school nurse.”⁴ Nina must have access to an EpiPen at all times while attending school, and may require its emergent administration “within seconds of reaction occurring to best avoid potentially life threatening complications.”⁵

¹ “Nina” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

² The information in this Ruling is drawn from the parties’ submissions to this point and is subject to revision in further proceedings.

³ Exhibit A in support of Parent’s *Motion to Allow Parent to Chaperone Field Trip* (“*Motion*”), Letter from Dr. Lisa Bartnikas, Allergy Immunology, Children’s Hospital, dated September 12, 2018.

⁴ *Id.*

⁵ Exhibit A in support of *Motion*, Letter from Dr. Michelle Maciag, Attending in Allergy Immunology, Children’s Hospital, dated September 26, 2017.

On February 19, 2019, Parents filed a *Hearing Request* against MURSD challenging the most recent 504 plan developed for Nina, dated September 14, 2018. Parents allege that Nina's 504 plan is deficient in several areas including, relevant for purposes of this motion, that Nina's current classroom teacher will not administer an Epipen without speaking with the nurse; that staff may not have been trained sufficiently regarding Epipens; and that the principal and staff have engaged in retaliatory behavior, including a revision of Nina's previous 504 plan that had permitted Parents to attend all field trips, to her current plan, limiting Parents' ability to attend field trips by prohibiting them from chaperoning unless other parents were also asked to chaperone. Parents requested an order from the Bureau of Special Education Appeals (BSEA) requiring the following: (1) an aide/paraprofessional in the classroom full time; (2) that the teacher and/or paraprofessional be willing and able to administer an Epipen when the nurse is not present; (3) that the parents be invited on all field trips and to volunteer at the school; and (4) a "comprehensive respectful meeting with the 504 team to ensure that all outstanding issues are addressed." The hearing was scheduled for March 26, 2019.

On March 1, 2019, MURSD requested postponement of the hearing due to the unavailability of District counsel.⁶ In its *Response* to Parents' *Hearing Request*, the District asserted, among other things that the recommendations provided by Nina's doctor, contained in a letter dated September 12, 2018, had been included in her 504 plan; that the District had developed a Health Care Plan for Nina in addition to her 504 plan; and that these plans together are adequate to ensure Nina's safety at school. With Parents' assent, the hearing was postponed to May 20 and 21, 2019, and a Pre-Hearing Conference was scheduled for April 12, 2019.

On April 5, 2019, Parents filed the instant *Motion*, accompanied by a memorandum of law and exhibits, concerning a field trip to Mechanics Hall in Worcester to attend a children's play on May 10, 2019 [hereinafter "Field Trip"]. They requested that the parties discuss the *Motion* during the Pre-Hearing Conference scheduled for the following week. In their *Motion*, Parents assert that the 504 plan developed for Nina for the 2017-2018 school year included the presence of a full-time aide in the classroom and provided that her parents would be invited to participate in all field trips taken by her kindergarten class. At the beginning of the 2018-2019 school year, however, the school changed Nina's 504 plan such that it "no longer offered a full-time aide in the classroom" and "parents' right to attend field trips was curtailed [such that they] would only be allowed to chaperone when other parent chaperones were invited...[They] complained about this change [and] the school told them not to worry and that parents were frequently asked to chaperone field trips in the first grade." According to Parents, earlier in the school year, Nina's class attended a field trip to the local library, but because no parents were asked to chaperone, Parents were not allowed to chaperone either.

In support of their *Motion*, Parents submitted Nina's mother's affidavit; letters from two doctors in the allergy program at Boston Children's Hospital; drafts of Nina's 504 plans; the Field Trip permission slip; a document published by the Center for Disease Control (CDC) and Prevention entitled "Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs;" a document published by the Massachusetts Department of

⁶The District also requested an extension of the deadline for filing its *Response* to Parents' *Hearing Request* and postponement of the Conference Call, also due to the unavailability of Counsel. Parents assented to these requests, which were allowed.

Education (DESE) entitled “Managing Life Threatening Food Allergies in Schools;” the Parent and Student Handbook for Nina’s school; and an email exchange between Nina’s parents and one of her teachers regarding the Field Trip.

As to the Field Trip, Parents make three arguments: (1) that Nina cannot attend the field trip without a parent chaperone because it is not safe, and as a result, she is being denied a free appropriate public education (FAPE); (2) that parents have a fundamental right to participate in their child’s education; and (3) that the District “changed the 504 plan for the sole purpose of excluding the parents from being chaperones as a form of retaliation against the parents for exerting their rights under federal law.” These arguments will be discussed in more detail in the following section.

At the Pre-Hearing Conference, the parties agreed the District would respond to Parents’ *Motion* by developing and filing a *Field Trip Safety Plan* [hereinafter “*Safety Plan*”] by close of business on April 24, 2019; the extra time was allowed in recognition that school personnel would not be in the office during April break. The parties agreed that this timeline would permit Parents to consider the plan offered by the District and determine, by April 29, 2019, whether a ruling from the undersigned Hearing Officer would be necessary in advance of the field trip scheduled for May 10, 2019. On April 17, 2019, the parties jointly requested a four month postponement of the hearing due to the unavailability of Parents’ expert witness and to permit the parties to continue working together toward resolution over the summer. By Order dated April 18, 2019, this request was allowed.

On April 23, 2019, the District filed its *Safety Plan*, which provides for the school nurse’s attendance, outlines steps to be taken prior to and on the day of the Field Trip, and involves a detailed explanation of responsibilities in case of emergency. Among other things, the *Safety Plan* includes a discussion between the nurse and Nina in advance of the Field Trip regarding precautions to be taken to keep her safe, and a statement that in the event “the nurse is with another medical emergency, [Nina’s classroom teacher] will administer EpiPen Jr for signs of anaphylaxis.”

On April 26, 2019, Parents filed a request for an extension until May 3, 2019 to respond. They explained that among other things, this would allow them to submit letters from Nina’s allergist and therapist. By Order dated April 29, 2019 the undersigned Hearing Officer denied this request, as to do otherwise would have required allowing the District an additional week to respond, rendering the *Motion* moot.

On April 29, 2019, Parents filed their *Response* to the District’s proposed plan. They raised two concerns: first, they lack written assurance that the classroom teacher is willing and able to give the EpiPen without the nurse; and second, Nina will be very anxious and nervous at the theater without one of her parents being present.

On April 30, 2019, the District filed a *Response* to Parents’ *Response* to its *Safety Plan*. MURSD attached a letter signed by Nina’s classroom teacher and another teacher indicating that they are both willing and able to give Nina’s EpiPen Jr. in the event that the nurse “is pulled for a medical emergency during the first grade field trip on May 10, 2019 and [Nina] shows signs of

anaphylaxis [*sic*] shock.” The District emphasized the provision in its *Safety Plan* for Nina to discuss the Field Trip with the nurse beforehand, as well as a note dated March 30, 2019 that it had received from Nina’s doctor indicating that during the doctor’s visit, Nina was able to identify several adults she would feel comfortable talking to at school.

On May 2, 2019, Parents filed a *Motion to Strike* the District’s letter dated April 30, 2019, arguing that “it is improper and contrary” to the Order issued the previous day, which, according to them, “prohibits new evidence regarding the *Motion to Allow Parents to Attend Field Trip* to be considered.”

DISCUSSION

I. Motion to Strike

Parents asserted, in their *Response* to the District’s *Safety Plan*, that they had not received written assurance of Nina’s classroom teacher’s willingness and ability to administer Nina’s Epipen outside of the presence of the nurse, in the event that she shows signs of anaphylactic shock. If I were to strike the District’s letter, filed in direct response to this assertion, I would have insufficient information before me to evaluate both the *Safety Plan* and Parents’ concerns. As such, Parents *Motion to Strike* is hereby DENIED.

II. Field Trip Safety Plan

Parents’ *Motion to Allow Parent to Chaperone Field Trip* is based on their assertion that by not allowing one of Nina’s parents to chaperone the first grade field trip to Mechanics Hall, MURSD is violating Nina’s right to FAPE and Parents’ right to participate in her education, as well as retaliating against Parents.

Parents have established, for purposes of the instant *Motion*, that Nina has severe, life-threatening allergies and must strictly avoid contact with her allergens, and that she requires immediate access to an Epipen and to someone trained and capable of administering the Epipen if and when she demonstrates symptoms of anaphylactic shock. Parents, through Nina’s mother’s affidavit, have also asserted that the Field Trip will include approximately eighty (80) students, and be chaperoned by the school nurse and five teachers; that Nina is anxious about going on the field trip; and that she is incapable of advocating for herself at this age, such that her mother “fear[s] that if she were to have an allergic reaction, she would not speak up for fear of getting in trouble.” At the time they filed the *Motion*, Parents also argued that “[n]o plans had been put in place about how [Nina] would be kept from exposure to her allergens.”

Parents have also established that recommended practices for school field trips include inviting parents of children with food allergies to accompany their child in addition to the regular chaperones.⁷ Both the CDC and the DESE anticipate that at times parents will not attend field trips with their children who have food allergies, even those at risk for anaphylaxis. Specifically,

⁷Exhibit E in support of Parents’ *Motion*, Center for Disease Control and Prevention, “Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs;” Massachusetts Department of Education, “Managing Life Threatening Food Allergies in Schools” [hereinafter “DESE Guidance”].

the DESE guidance states, “Parents of a student at risk for anaphylaxis should be invited to accompany their child on school trips, in addition to the chaperone. . . In the absence of accompanying parents/guardian or nurse, another individual must be trained and assigned the task of watching out for the student’s welfare and for handling any emergency.”⁸

The District’s *Safety Plan* includes provisions to be taken prior to the field trip (discussion between Nina and the nurse), and the day of the field trip (to include a charged cell phone and portable charger for the school nurse, an EipPen Jr and Xopenex, if provided by the parent, in a field trip bag for which the school nurse is responsible, in addition Nina’s EpiPen bag; a FARE emergency care plan to be followed in case of exposure; and parent-provided wipes to wipe seats on the bus and in the theater prior to Nina being seated). The *Safety Plan* provides for the nurse to set next to or in front of Nina on the bus, and next to her throughout the performance, and to accompany her to the bathroom if necessary. It delineates responsibilities in case of emergency, including that the nurse will administer the EpiPen and stay with and monitor Nina until EMTs arrive, while one of two teachers will call 911 to explain that an EpiPen Jr. was administered. The *Safety Plan* includes a contingency plan in the event that the nurse is with another medical emergency at any time. The *Safety Plan* also includes information about the closest hospital and emergency contact information. MURSD has also established, through evidence, that two teachers who will be on the field trip are willing and able to administer Nina’s EpiPen Jr. during the field trip if necessary.⁹

A. *Parents’ Right to Participate in a Child’s Education Does Not, in the Circumstances of this Matter, Require MURSD to Invite Them to Chaperone the Field Trip.*

I address Parents’ second allegation first: that MURSD is violating Parents’ “right to make decisions regarding the education and upbringing of their children” by not permitting them to attend the Field Trip. Parents also reference the language of the Elementary and Secondary Education Act and the Individuals with Disabilities Education (IDEA) regarding parental participation. Only the IDEA falls within the jurisdiction of the BSEA. As to the IDEA, Parents cite to case law regarding parents’ involvement in “their children’s special education identification, assessment, programming, and placement,” and the U.S. Department of Education Office of Special Education letter encouraging school districts to work together with parents to meet both parties’ needs, including “providing opportunities for parents to observe their children’s classrooms and proposed placement options.” None of the sources they reference is meant to provide parents with unfettered access to their children in school or on field trips where such access may interfere with school programming. Although best practice entails inviting parents of children with food allergies to chaperone field trips, in this matter Parents certainly do not possess a “fundamental right” to attend Nina’s school field trip where no other parents have been invited to chaperone. This argument fails.

B. *Parents Have Not Established that MURSD’s Decision Not to Invite Them to*

⁸ DESE Guidance at p. 17.

⁹ Letter signed by nurse and two teachers who will be on the field trip, submitted by the District with its *Response* on April 30, 2019, which states: “In the event that the nurse is pulled for a medical emergency during the first grade field trip on May 10, 2019 and [Nina] shows signs of anaphylaxis shock [*sic*] [teacher 1] or [teacher 2] are willing and able to give [Nina]’s EpiPen Jr. . . The field trip safety plan has been reviewed and agreed upon with” these two teachers.

Chaperone the Field Trip Constitutes Retaliation.

Parents' contention that the District changed Nina's 504 plan "for the sole purpose of excluding the parents from being chaperones as a form of retaliation for exerting their rights" rests on several allegations. First, they allege that the school misled Parents regarding parent attendance on first grade trips when the language of the 504 plan was changed. Second, they cite to language from the school handbook that they argue allows "for parent chaperones without qualification." These policies, in fact, state that parents are welcome and encouraged to volunteer, attend programs, etc. and that when they do so, their time is greatly appreciated. Nowhere does the language provide parents with unrestricted access to all school activities at all times. Moreover Parents refer to disputed allegations as evidence in support of their position (i.e. that the "arbitrary" change was made "for a nefarious reason," specifically "that the accommodation was changed after [Nina] engaged an advocate;" and that the principal told Mother that she was a "pain in the ass.") The District disputes these allegations, and asserts that this particular field trip is structured every year as a special event for students and school staff; in the fifteen years the current teacher has taught first grade, parents have never been invited to chaperone.¹⁰ Given that the changes to the 504 plan are the crux of Parents' *Hearing Request*, at this point, based on the limited evidence before me, I cannot conclude that retaliation against Parents is the basis for the contested changes to Nina's 504 plan. Similarly, I cannot conclude that MURSD's decision not to allow one of her parents to chaperone the Field Trip to Mechanics Hall is retaliatory.

C. *Parents Have Not Established That MURSD's Safety Plan is Deficient, Such That Not Allowing a Parent to Chaperone the Field Trip Violates Nina's Right to FAPE Under Section 504.*

Parents allege that it is unsafe for Nina to attend the Field Trip to Mechanics Hall without a parent chaperone and, as a result, she is being denied FAPE. As I recognized above, both the CDC and the DESE recommend inviting parents of children with life-threatening food allergies to attend field trips with their children, but neither agency requires this measure. To determine whether MURSD's decision not to allow one of Nina's parents to chaperone the Field Trip violates her right to FAPE, I must examine the *Safety Plan* in light of the evidence regarding Nina's life-threatening allergies and required accommodations, which include immediate access to an Epipen administered by someone willing and able to administer it, should she demonstrate symptoms of anaphylactic shock.

The elements of MURSD's *Safety Plan*, reviewed in detail above, evince careful attention to the severity of Nina's allergies, her doctors' recommendations, and Parents' concerns. Two teachers familiar to Nina, in addition to the school nurse, will be willing and able to administer an Epipen in the event of an anaphylactic shock. Nina will have immediate access to an Epipen through these three individuals. The nurse will be next to her at all times during the field trip (though possibly in front of her on the bus). In the event that Nina shows signs of anaphylactic shock while the nurse is unavailable due to a medical emergency involving another student, the *Safety Plan* names which of the two willing and able teachers will administer the Epipen, and who will call 911. To address Parents' concerns about Nina's anxiety, the *Safety Plan* provides

¹⁰ Exhibit G in support of Parents' *Motion*, email exchange between Parents and Nina's teacher.

advance discussion between Nina and the nurse regarding precautions to be taken during the trip. Moreover, though parents express concern that Nina would not talk to an adult in the event of an allergic reaction, Nina told her doctor that there are several adults at school she would feel comfortable talking with.

As such, although inviting one of Nina's parents to chaperone her school field trips would be in accordance with best practices, such an invitation is not required. The detailed *Safety Plan* developed by MURSD for the Field Trip addresses Nina's life-threatening allergies sufficiently, such that her ability to participate in the Field Trip to Mechanics Hall is not curtailed. The District's failure to invite Parents to chaperone, therefore, does not constitute a violation of Nina's right to FAPE.

CONCLUSION

Parents have failed to establish that Nina cannot attend the first grade field trip to Mechanics Hall on May 10, 2019 because it is not safe, and therefore Mendon-Upton Regional School District's decision not to invite her one of her parents to chaperone constitutes a denial of FAPE. They have also failed to prove that the MURD's decision violates parents' fundamental right to participate in their child's education, or, as to this Field Trip, that the District changed the 504 plan for the sole purpose of excluding the parents from being chaperones as a form of retaliation against the parents for exerting their rights under federal law.

ORDER

Parents' *Motion to Allow Parent to Chaperone Field Trip* is hereby DENIED.

The matter remains scheduled for Hearing September 17 and 18, 2019, with a status report due by close of business on August 16, 2019.¹¹

By the Hearing Officer:

Amy M. Reichbach
Dated: May 6, 2019

¹¹ On May 2, 2019, Parents filed a *Motion to Advance Hearing Date*, with exhibits and affidavit. As the District has until May 9, 2019 to respond, this Ruling does not address Parents' *Motion to Advance*.