

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

In re: Ollie<sup>1</sup>

BSEA #2007894

**RULING ON SPRINGFIELD PUBLIC SCHOOLS' MOTION TO POSTPONE**

This matter comes before the Hearing Officer on the Motion of the Springfield Public Schools (Springfield or “the District”) to Postpone the Hearing scheduled to begin May 15, 2020 due to school closures in connection with COVID-19. Springfield filed its *Motion to Postpone* on April 1, 2020, arguing that it was unable to prepare witnesses for hearing as they are “all working remotely and completely absorbed in the development of virtual learning opportunities for students.” Moreover, Springfield asserted that it was unlikely to be able respond fully to anticipated discovery requests. Finally, Springfield stated that it “will not agree to do this hearing virtually for many reasons which all amount to a high risk that the losing party of a virtual BSEA hearing would very likely have grounds to appeal and have the hearing re-heard in person at a later time.”

On April 2, 2020, Parent filed a request that the District’s postponement request “be quashed,” which I construe as an *Opposition* to Springfield’s *Motion*. Parent argued that although District staff are working mostly from home, an email sent by someone who works for Springfield indicated that some staff are physically going into the office to complete work. As to discovery, she asserted the District had submitted its documents in a previous matter addressing similar claims and as such, had sufficient time to prepare for discovery. Finally, she contended that Springfield’s postponement request was essentially a “convenient procrastination technique” that impeded Ollie’s ability to access a free, appropriate public education (FAPE).

A Hearing on Springfield’s *Motion* was held telephonically on April 3, 2020. At that time, I explained that my decision would turn on the risk of prejudice to the Parent/Student if the postponement were allowed, and the risk of prejudice to the District if it were denied. I deferred my Ruling in order to permit the parties to obtain some answers to inform my decision, including: (1) the likely availability of witnesses should the matter be postponed; (2) the feasibility of a Team meeting to discuss summer services for Ollie over the next few weeks, and what those options could be; (3) and the nature of outstanding discovery requests. Further arguments were held during a telephonic *Motion Session* on April 9, 2020. For the reasons set forth below, Springfield’s *Motion to Postpone* is hereby ALLOWED.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

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<sup>1</sup> “Ollie” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

Following her withdrawal of a *Hearing Request* filed on December 30, 2019, which was addressed in detail in my *Ruling on Springfield's Partial Motion to Dismiss* in BSEA # 200476 (“previous *Ruling*”), Parent filed a *Hearing Request* on February 24, 2020. As in her previous *Hearing Request*, with additional claims and information in this amended form, Parent alleged that Springfield had failed to offer Ollie a FAPE since April 2017. According to Parent, the relationship between the family and the District has deteriorated due to the misconduct of Springfield officials to the point that Ollie, who has been diagnosed with autism, ADHD, sensory processing disorder, a language disability, and an intellectual impairment, is now afraid to participate in his own Individualized Education Program (IEP) meetings. She contends, further, that her attempts to have the Superintendent investigate this misconduct has resulted in retaliation against her and her son by both Springfield Public Schools and the Mayor’s office. Specifically, Parent argues that Springfield has failed to provide Ollie with a highly qualified reading coach and appropriate reading intervention; failed to create and deliver appropriate transition services; and failed to provide travel training. She requested that the BSEA find that Springfield has failed to offer Ollie a FAPE since April 2017, changed his placement “in denial of parent rights, and violation of IEP placement process,” retaliated against parent and student for participating in protected activities, violated student/parent rights by bringing an attorney to a Team meeting without notice, altered the IEP outside of the Team meeting “with the consensus of then removal of (*sic*) intellectual impairment.” Parent further requested that the BSEA order Springfield to reimburse her for travel expenses due to the District’s failure to provide transportation, hire an independent transitional coach for Ollie and write transition goals that will provide him with a FAPE, write a policy for misconduct by top administration, “pay for two addition (*sic*) college courses in the steps program at AIC for failure to provide support during dual enrollment at STCC resulting in f’s for his classes,” and “appropriate identification language bases learning disability with compensatory services (*sic*).”

Initially, Springfield did not construe Parent’s *Amended Hearing Request* as a new matter, though the BSEA generated and sent a *Notice of Hearing* on February 26, 2020. The Hearing was scheduled for March 30, 2020. On March 23, 2020, Springfield requested postponement due to school closures, and during a Conference Call on that date, Parent agreed to a two-month postponement. The Hearing Officer also noted that Ollie’s IEP would be expiring before the Hearing and, as such, a further amendment might be required if the parties were unable to develop an IEP acceptable to Ollie and his parent. The Hearing was scheduled for May 15, 20, 21, and 27, 2020. During the Conference Call the parties also discussed my previous *Ruling* and framed the issues for hearing. On March 24, 2020, I issued an Order outlining them as follows:

- (1) Whether any IEPs proposed by Springfield and not fully accepted by Parent/Student between February 24, 2018 and February 24, 2020, including the most recent IEP for the period from April 2019 to April 2020 (including transition services), were and/or are reasonably calculated to provide Ollie with a FAPE;<sup>2</sup>
- (2) Whether any accepted, expired IEPs between February 24, 2018 and February 24, 2020 were implemented fully, and if not, what is the appropriate remedy;

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<sup>2</sup> Among other things, Parent seeks reimbursement of transportation costs she incurred.

- (3) Whether Springfield has committed procedural errors in connection with a meeting in or about September 2018 that amounted to a deprivation of a FAPE because they impeded Ollie's right to a FAPE; significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of FAPE to Ollie; or caused a deprivation of educational benefits;
- (4) Whether any of the District's actions between February 24, 2018 and February 24, 2020, described by Parent as discrimination, retaliation, threat, and abuse of power, impeded Parent's ability or Ollie's ability to participate in IEP meetings.

A further Conference Call took place on April 9, 2020, to discuss the information gathered by the parties and the logistics of a virtual hearing. In the interim, I was copied on multiple emails from Parent addressed to the District regarding the time of the conference call and alleging that she had been left out of communications. I found it challenging to follow the string of emails and directed the parties that they were not to email me unless they were requesting that I take some action, and in that event, to attach a request or motion to an email copied to all parties. During the call on April 9, 2020, I found it difficult to maintain order; the parties talked over each other on multiple occasions, continued speaking about issues I had already stated were not being addressed at that moment, and, at times, Parent directed personal attacks at Springfield's attorneys and their clients, District personnel.

## II. DISCUSSION

### A. Relevant Law, Regulations, & Rules

The Bureau of Special Education Appeals (BSEA) has the authority to resolve educational disputes pursuant to M.G.L. c. 71B and its implementing regulations, 603 CMR 28.00. BSEA proceedings are conducted in accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 *et seq.*, Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. § 794), and the regulations promulgated thereunder (34 C.F.R. § 300 and § 104, respectively). Proceedings are governed by the BSEA *Hearing Rules*, which were developed in accordance with 603 CMR 28.00, federal due process procedures, the Massachusetts Administrative Procedure Act, M.G.L. c. 30A, and the Massachusetts Standard Adjudicatory Rules of Practice and procedure, 801 CMR 1.10 *et seq.* Although the parties in the instant matter did not cite to these provisions, I review them here because they informed my decision to allow Springfield's postponement request over Parent's objection.<sup>3</sup>

#### 1. *Postponement Requests*

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<sup>3</sup> Although not raised by Springfield as a basis for its postponement request, 801 CMR 1.01(12) provides, "The Presiding Officer, may, if no Party objects, designate that all or a portion of a hearing be conducted with one or more participants situated in different locations and communicating through the medium of one or more telecommunication devices." I do not see this regulation as an absolute bar to proceeding. I would still consider the risk of prejudice to the parties of either course of action, as I have done here.

BSEA *Hearing Rule III* governs requests for postponement. Pursuant to this rule, a party may request postponement of a hearing at least 6 business days before the scheduled hearing date. The Hearing Officer may grant this request for good cause. The decision whether to postpone a hearing is within the discretion of the Hearing Officer, who must give serious consideration to opposition to a request.

## 2. *Hearing Officer's Obligation to Ensure Fair and Orderly Hearing*

BSEA *Hearing Rule IX* sets forth how a hearing is conducted. According to Rule IX(A), the Hearing Officer “has the authority and obligation to ensure that appropriate standards of conduct are observed and that the hearing is conducted in a fair and orderly manner.” Rule IX(B) assigns to the Hearing Officer both the duty and the power to “[r]egulate the presentation of the evidence and the participation of the parties for the purpose of ensuring an adequate and comprehensive record of the proceedings.”

### B. Application of Provisions in this Matter Requires Postponement

As explained above, when a party – particularly the moving party – opposes a postponement request, the Hearing Officer must consider seriously the reasons for that opposition. Here, Parent’s primary stated concern is that the District is attempting to delay the proceeding indefinitely to serve itself, “while exhausting the Plaintiff’s resources.” She contends that the District does not need additional time to produce discovery. Beyond asserting that Ollie is an older student and is anxious to have everything behind him, Parent does not argue that the specific issues raised in this matter require immediate resolution. In fact, she appears to be most concerned about programming after the end of April, when semester ends in Ollie’s current placement – which is beyond the scope of the instant *Hearing Request*.

Neither of the District’s objections – regarding discovery and its inability to prepare witnesses adequately because they are engaged in teaching – are so significant that they justify postponement without further consideration. As the parties discussed during the Conference Call on April 9, 2020, Ollie’s current IEP will expire before the date of the hearing. A Team meeting will take place in the next week or two to develop an IEP for the remainder of the 2019-2020 school year and the beginning of the 2020-2021 school year; this meeting will include a discussion of Extended School Year services for summer 2020. As such, all current claims seek compensation – mostly for alleged procedural violations and inadequate proposal and/or delivery of services. Should Parent prevail on one or more of her claims, the appropriate remedy would be an order of compensatory services and/or reimbursement for transportation.

For me to conduct a hearing virtually, all participants must (and must be able to) follow my directives regarding how we proceed, including – but not limited to – ensuring that only one person speaks at a time.<sup>4</sup> Significantly, my experience during a Pre-Hearing Conference in the previous proceeding involving these parties and these claims, as well as Conference Calls in this matter, most notably the two most recent calls that involved Parent, Ollie’s advocate, and two Springfield attorneys, demonstrates the challenge of maintaining order in any setting in this

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<sup>4</sup> This is essential to ensure that the transcript is accurate.

particular case. I have no question that it would be difficult – if not impossible – in the circumstances of this case, to maintain order in a hearing conducted virtually, with a large number of witnesses, continued personal attacks levied by Parent toward District personnel, and the high emotions engendered by this strained relationship.

For these reasons, I am doubtful that I could “[r]egulate the presentation of the evidence and the participation of the parties for the purpose of ensuring an adequate and comprehensive record of the proceedings,” if I were to deny Springfield’s postponement request and conduct the Hearing virtually. The risk of prejudice to both parties would be too high. On the other hand, there is a low risk of prejudice to Parent and Student in the event of postponement, as their claims, which involve past procedural violations and expired IEPs, are compensatory in nature.

## CONCLUSION

Upon consideration of Springfield Public Schools’ *Motion to Postpone* and Parent’s *Opposition*, and the arguments advanced by each party, I conclude that in the unique circumstances of this case, a virtual hearing poses too high a risk of prejudice to both parties.

## ORDER

The District’s *Motion to Postpone* is hereby ALLOWED for good cause.

A Conference Call will take place at 1:00 PM on April 27, 2020 to discuss the status of discovery, the potential need for further amendment of Parent’s *Hearing Request* to include the most recently proposed IEP, and any other motions that may be filed at least one week in advance of that date.

Any pending discovery is due by close of business (5:00 PM) on May 15, 2020. Any further discovery requests must be made by way of a formal letter attached to an email, rather than in the body of the email. I should not be included in this correspondence.

The matter will proceed to Hearing on June 29 and 30 and July 13, 16, and 17, 2020. Should the BSEA still be operating remotely at that time, I will consider a further *Motion to Postpone*.

By the Hearing Officer:

/s/

Amy M. Reichbach

Dated: April 10, 2020