**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Ollie[[1]](#footnote-1) BSEA **#**2007894

**RULING ON SPRINGFIELD PUBLIC SCHOOLS’ SECOND 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 June 29, 2020 “until such a time as the hearing can be held in person, hopefully in September.” The District filed this *Motion to Postpone* on June 8, 2020, following a Zoom Motion Session that took place on June 3, 2020. On the same date, Parent field a *Response*, agreeing to hearing dates in late August or early September under certain conditions.

During the Motion Session, it became clear that discovery would not be completed with adequate time to prepare for a hearing before the end of June, primarily due to Parent’s late-filed requests. We discussed moving the late June dates to mid-July. I also indicated that my experience with the parties during Zoom Motion Sessions had caused me to reconsider my earlier conclusion that I would not be able preside over a fair and orderly hearing virtually.

In support of its *Motion to Postpone*, Springfield asserted that a virtual proceeding could not be conducted in a manner that would result in a fair and orderly hearing, consistent with my conclusion in my Order of April 10, 2020. The District also contended that a delay would not cause prejudice because Parent has accepted the placement it offered Ollie for the 2020-2021 school year.

In her *Response*, Parent stated that she would agree to hearing dates in late August or early September, with the understanding that the District would produce all of the witnesses she wished to call at that time.[[2]](#footnote-2) She indicated that she too preferred an in-person hearing, but that she did not agree with the District’s argument that a virtual hearing could not be fair and orderly.

For the following reasons, the District’s *Motion to Postpone* is ALLOWED IN PART.

1. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The factual background and procedural history of this matter has been described in detail in my previous published Rulings, including my *Ruling on Springfield Public School’s Motion to Postpone*, issued April 10, 2020, and my *Ruling on Multiple Motions*, issued May 28, 2020.

In addition to the motions addressed in these previous Rulings, no fewer than 18 motions have been filed by one party or the other, leading to responses from the opposing party and multiple virtual motion sessions. There is no indication that this is abating.

1. DISCUSSION
2. 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*.

1. *Postponement Requests*

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.

1. *Hearing Officer’s Obligation to Ensure Fair, Orderly, Just, and Speedy Determination*

Rules governing formal administrative proceedings in Massachusetts are to be “construed to secure a just and speedy determination of every proceeding.”[[3]](#footnote-3) Consistent with this tenet, BSEA *Hearing Rule* IX(A) grants the Hearing Officer 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.”

1. Application of Provisions in this Matter Does Not Permit Postponement Beyond July

In this matter, the District seeks postponement of the hearing until such time as proceedings resume in-person. Based on filings thus far, it appears that this hearing will involve at least 25 people – two attorneys for Springfield, Parent, Ollie’s advocate, the Hearing Officer, at least one court reporter, and a minimum of 20 witnesses. At least some of these individuals are, or may be, immuno-compromised. Given the realities of COVID-19, it is unlikely that this number of people will be able to participate in a hearing indoors by early September. As such, the options will be to either hold the hearing virtually, or delay it indefinitely, until such time as proceeding virtually is no longer necessary.

It would be unjust, and clearly not speedy, to postpone the hearing indefinitely. Moreover, given the sheer number of filings in this matter, and the time required to give each motion due consideration, it is inefficient (and less than orderly) to continue the matter even an additional six weeks beyond the July dates that have been scheduled. Postponing the first two days, as the parties agreed to do during the Motion Session, will provide them with an additional two weeks after discovery is completed. Finally, as it is unlikely that the hearing would occur in-person at the end of August or beginning of September, the postponement would do nothing to ameliorate the District’s current concerns about my ability to maintain order in a virtual proceeding. Moreover, during the last two Motion Sessions held via Zoom, the parties have demonstrated increased civility; they have become better able to hear each other and to listen to me. As such, I am more confident now than I was two months ago that I will be able 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.”

CONCLUSION

Upon consideration of Springfield Public Schools’ *Motion to Postpone* and Parent’s *Response*, and the arguments advanced by each party, I conclude that postponement beyond July is not supported by good cause.

ORDER

The District’s *Motion to Postpone* is hereby ALLOWED as to the first two dates of the Hearing and DENIED as to the remainder.

A further Zoom Motion Session will take place at 2:00 PM on June 19, 2020 to discuss any then-pending motions. On this date, we will also consider whether an additional hearing date is necessary.

Parent’s responses to the District’s discovery requests discussed during the Motion Session on June 3, 2020 are due by close of business (5:00 PM) on June 11, 2020. Springfield’s responses to Parent’s more recent discovery requests, discussed during the Motion Session, are due by close of business on July 3, 2020.

The matter will proceed to Hearing via Zoom on July 13, 15, 16, and 17, 2020. As it will proceed remotely, I need not consider Parent’s *Motion to Change Venue*, filed May 25, 2020.

Exhibits and witness lists, which must include all witnesses’ email addresses, are due by close of business on July 6, 2020. An additional copy must be provided to the court reporter before the first day of the hearing. A practice Zoom Session, to include all witnesses, will be scheduled by the Court Reporter.

By the Hearing Officer:

/s/

Amy M. Reichbach

Dated: June 11, 2020

1. “Ollie” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. [↑](#footnote-ref-1)
2. As Parent noted in her *Response*, this would not include any witnesses for whom I had quashed subpoenas. [↑](#footnote-ref-2)
3. 801 C.M.R. 1.01(2)(b). [↑](#footnote-ref-3)