# COMMONWEALTH OF MASSACHUSETTS

## Division of Administrative Law Appeals

**Bureau of Special Education Appeals**

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In Re: Ollie[[1]](#footnote-1)

& BSEA #2102164

Springfield Public Schools

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**SECOND RULING ON PARENT MOTION FOR A PUBLIC HEARING**

 This is to memorialize the Ruling made orally on January 25, 2021, the first day of Hearing in this matter, closing the Hearing to the public. This is the second ruling addressing the Parent’s January 11, 2021 Request for a Public Hearing. On January 19, 2021 the Parent’s Motion was granted, with conditions: the Parent and the Student were to individually execute a written waiver of their respective privacy/confidentiality rights and a release of any claims that could arise as a result of infringement of those rights due to participation in the BSEA Hearing, along with a statement, orally on the Hearing record, affirming an informed, knowing and voluntary waiver. The written statement was sent to the family in advance of the Hearing.[[2]](#footnote-2)

 Ollie is an adult. While he has delegated educational decision-making authority to his parent, he is not under guardianship. He retains all other rights and privileges of adulthood, including the right to control his personal information.

 Before beginning the substantive portion of the Hearing on January 25, 2021 the Hearing Officer read to Ollie the required written confidentiality waiver. After reading the statement the Hearing Officer conducted a brief examination to probe Ollie’s understanding of the terms, conditions and consequences of the waiver and to determine whether his waiver and release could be found to be both knowing and voluntary. His answers established that it could be neither. Ollie did not make an unequivocal affirmative waiver of his privacy rights. On the contrary, he indicated, clearly, that he would decline to release his personal information to the public.

 While a parent in an IDEA action has an absolute right to open due process proceedings to the public, an adult student has an equally inviolable right to confidentiality of personal information. In this matter, the substantive and procedural claims the Parent and the Student bring to the BSEA are inextricably intertwined. One cannot proceed without the other. Yet their competing interests, the Parent in a public hearing and the Student in maintaining confidentiality, are genuine, substantial and irreconcilable. The BSEA must, therefore, choose the appropriate path by balancing the potential harm of each course.

 After careful deliberation, considering the competing rights, interests and potential risks, I find that the statutory guarantee of privacy and confidentiality afforded to Ollie by the IDEA, FERPA and related statutes and regulations outweighs the Parent’s IDEA right to a public hearing. To find otherwise would ignore Ollie’s clearly expressed desire to maintain control, and avoid disclosure, of his private personal information. The risks to Ollie’s privacy through public participation in a special education hearing are foreseeable, significant and potentially permanent. Protecting Ollie’s choice to maintain confidentiality also advances the spirit and the mission of the IDEA: to support students with disabilities in their growth toward independent adult life. On the other hand, denying public access to this one due process hearing constitutes a harm to the Parent’s procedural interest that is fleeting and somewhat reparable. Therefore, in order to protect the privacy interests of the Student to the fullest extent possible on an internet mediated videoconferencing platform, this Hearing must be closed to the public.

ORDER

 In light of the unique circumstances of this case the Parent’s Request for a Public Hearing is DENIED.

By the Hearing Officer.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lindsay Byrne

Dated: January 29, 2021

1. “Ollie” is a pseudonym chosen by the BSEA to protect the privacy of the Student and family in documents available to the public. [↑](#footnote-ref-1)
2. The waiver states:

 Waiver of Confidentiality/Privacy Rights in association with IDEA Due Process Proceedings

 I,\_\_\_\_\_\_\_\_\_\_, the Parent/Student at issue in the matter of “Ollie” and the Springfield Public Schools, BSEA # 21-02164, hereby request that the due process hearing to be held on January 25 and 26, 2021 by videoconference be open to the public.

 This Request is made knowingly and voluntarily. I understand that the Hearing will be held on a remote videoconferencing platform and that by inviting the public to participate, and by sharing the access information with individuals/ organizations not affiliated with the Springfield Public Schools, the BSEA, and/or Catuogno Reporting Services, I am agreeing to the risk of public disclosure and dissemination of personal information about me that would otherwise remain confidential. I acknowledge that my name, image, voice, health history, student and educational records, family information (including residential address and contact information, birthdates, identification numbers, etc.) and other sensitive personal information may be discussed at the Hearing and/or be visible in documentation, and thus may be publicly available for any kind of use for any length of time.

 I acknowledge that the Springfield Public Schools, the BSEA and Infraware/Catuogno have no control over the actions of public participants in this Hearing. I acknowledge that my personal information may be disclosed, acquired, recorded, reproduced, altered, shared, used, monetized, misused, stored and/or published by individuals and entities that participate directly in the Hearing or come to acquire my information through the participation in the Hearing of another individual or entity. I understand that the use, misuse, alteration, publication, dissemination, or sharing of my personal information may cause harm to me now or at some time in the future.

 I agree to hold the Springfield Public Schools, the BSEA, the Infraware/Catuogno Reporting Services and any of their employees, representatives, contractors or assignees harmless for any consequences that could be connected to the participation of the public in this due process hearing. I waive all rights to complain or sue for any type of damage, or to enforce any rights, arising under any privacy, confidentiality or records statute, regulation or policy connected to the disclosure or use of my personal information if derived by individuals and/or entities during, in connection with, or subsequent to, this due process hearing.

Acknowledged and signed this day \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [↑](#footnote-ref-2)