**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Plymouth Public Schools BSEA #: 2414882**

**RULING ON PLYMOUTH PUBLIC SCHOOLS’ MOTION FOR POSTPONEMENT**

This matter comes before the Hearing Officer on Plymouth Public Schools’ (Plymouth or the District) *Motion for Postponement* filed with the BSEA on July 30, 2024. In it, the District seeks a postponement of the above-referenced matter from the current hearing dates of August 13, 14, and 15, 2024 to September 24, 25, and 26, 2024, on the grounds that Plymouth’s witnesses are unavailable on the August dates. Moreover, according to Plymouth, Parents had previously filed a Request for Hearing in January 2024 only to withdraw their Hearing Request two days before the hearing was scheduled to begin. Parents then filed the instant Request for Hearing on or about June 17, 2024, four days after the last day of the District’s school year. To force the District to defend itself at this juncture without all witnesses available when it was ready to do so several months prior would unduly prejudice the District. In addition, the District contends that the previously agreed upon August dates were scheduled premised on understanding that the parties had reached an agreement in principle, to allow time for the parties to complete and execute a written settlement agreement. The District had acted in good faith in relying on the parties’ agreement in principle to pause preparations for hearing and discovery requests so as to conserve District resources. However, the parties have been unable to come to agreement on the terms of the written settlement agreement, and the District intends to issue discovery requests forthwith for the purposes of the hearing. Plymouth further asserts that, upon information and belief, Parents have already made a tuition deposit to secure Student’s enrollment at Inly School for the 2024-2025 school year.

Via email dated July 31, 2024, Parents, via counsel, responded that they “vehemently oppose the motion.” According to Parents, the District was “already granted one postponement to August 13-15, 2024,” and “any further postponement would prevent parents from obtaining a ruling prior to the start of the new school year, which would place parents in an impossible situation as they are unilaterally funding an out of district placement.”

The District requested a hearing on its *Motion*, and the parties’ arguments were heard during a conference call on July 31, 2024.

For the reasons set forth below, the District’s Motion is ALLOWED.

**RELEVANT PROCEDURAL HISTORY:**

Student is an eight-year-old girl in the second grade who until January 2024 was enrolled in Plymouth. She has diagnoses of Autism Spectrum Disorder, ADHD, delayed social skills, and Generalized Anxiety Disorder. Student struggles with anxiety and school refusal. She is eligible for and has been receiving special education and related services pursuant to an IEP since kindergarten.

Since June 2023, and prior to her unliteral placement at the Inly School in Scituate, Massachusetts, Student had refused to attend school. On January 30, 2024, Parents filed a Hearing Request (BSEA # 2407535), asserting, in part, that Student was denied a FAPE by Plymouth and seeking, in part, a placement in “a private, holistic, student-centered school with small class sizes and an emphasis on social-emotional well-being”; reimbursement of tuition for Student’s unilateral placement at the Inly School; and compensatory services for the District’s “failure to provide specialized instruction in reading comprehension and written expression since February 2023 and missed special education services from September to December 2023.” The Hearing was scheduled to begin on April 10, 2024. On April 9, 2024, Parents withdrew the matter without prejudice.

On June 17, 2024, Parents filed a new Hearing Request with the BSEA (BSEA # 2414882). In it, Parents assert, in essence, the same facts previously asserted in BSEA # 2407535, but add that

“[i]n May and June 10, 2024, the Team reconvened to discuss an updated independent neuropsychological evaluation Parent obtained regarding Student, and once again the District concluded the Team Meeting without parental input as to goals and objectives. The District partially he[a]rd Parent Concerns at the May 2024 Team Meeting, but when Parent counsel asked that Parent's[sic] be able to complete their Parent Concerns comments at the June 2024 Team Meeting, the District verbally agreed to hear said concerns during a later portion of the meeting, and then never allowed Parents the opportunity to make those concluding Parent Concerns comments as time ran short.”

Parents further assert that

“[t]o date, Parent concerns have not been fully heard and Parents have not been permitted to meaningfully participate in developing appropriate goals/objective/benchmarks for their Student's IEP, and as such no IEP developed at this time is compliant with Federal or State special education laws. Parents simply ask to be heard on their Parent concerns, and to be able to participate in developing appropriate goals and benchmarks. The Team has now disbanded for the summer 2024, and Parents have no choice but to re-enroll the Student at Inley for the 2024-2025 academic year, where procedural and substantive due process has not yet been afforded to Parents/Student.

To date, Parents have not received an N1 or a revised proposed IEP resulting from the June 10, 2024 Team Meeting.”

As such, Parent contend that “the District procedurally and substantively deprived the Student of FAPE in the LRE since June 2022 by failing to allow Parents to meaningfully participate in developing IEP goals and benchmarks, for pre-determining and unilaterally determining the Student's ineligibility for summer 2022 ESY services, and for improperly denying the Student ESY for the summer 2023 and summer 2024.” They seek, in part, reimbursement for tuition and transportation costs arising from Parents’ unilateral placement of the Student at Inley School since January 2024 “and prospectively” in “compensation for the historic, continuous, and ongoing procedural and/or substantive due process denial and denial of FAPE in the LRE since June 2022.”

On July 11, 2024, the parties jointly requested to postpone the instant matter on the grounds that “the parties [had] reached an agreement in principle.” The parties jointly requested a postponement of the automatic hearing date of July 22, 2024 to August 13-15, 2024 “to allow additional time for the parties to execute a complete written settlement agreement.” The parties’ request was allowed for good cause.

**LEGAL STANDARDS:**

Hearing Officers are bound by the *BSEA* *Hearing Rules for Special Education Appeals*(*Hearing Rules*) and the Standard Rules of Adjudicatory Practice and Procedure, 801 Code Mass Regs 1.01. 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, and the Hearing Officer may grant this request for good cause.[[1]](#footnote-1) 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. Similarly, 801 CMR 1.01(7)(d) states that

“[f]or good cause shown a scheduled hearing may be continued to another date:

1. by agreement of all Parties with the permission of the Presiding Officer, provided the Presiding Officer receives a letter confirming the request and agreement before the hearing date; or

2. by written motion to continue made by a Party at least three days prior to the hearing date; or

3. by the Presiding Officer on his or her own motion or upon a motion to continue made at the scheduled hearing.”

Caselaw further demonstrates that whether to continue any judicial proceeding is a matter entrusted to the sound discretion of the judge, and his decision will be upheld absent an abuse of that discretion.[[2]](#footnote-2) However, such discretion is not unfettered.[[3]](#footnote-3) In considering a request for a continuance, a judge should consider whether the failure to grant a continuance “would be likely to make a continuation of the proceeding impossible, or result in a miscarriage of justice.”[[4]](#footnote-4) In determining whether to grant a continuance, judges are to be guided by the “controlling principle … that a continuance should be granted only when justice requires.”[[5]](#footnote-5)

**APPLICATION OF LEGAL STANDARDS:**

Here, Plymouth has articulated valid reasons for seeking a postponement of the Hearing dates.[[6]](#footnote-6) Most compelling is Plymouth’s argument that the parties jointly requested the postponement on July 11, 2024[[7]](#footnote-7) and selected the August dates believing in, good faith, that an agreement in principle had been reached that would translate into settlement of the matter prior to that time; but, as resolution has not been possible, the District would be unduly prejudiced by its stay on discovery and the unavailability of its witnesses on the selected August dates. In the instant matter there are no allegations that the parties had not reached an agreement in principle when selecting the August hearing dates (in fact, their joint written postponement request explicitly states to the contrary), or that they did not attempt to resolve the matter diligently.[[8]](#footnote-8) As such, it would be a “miscarriage of justice”[[9]](#footnote-9) to force the District to go to hearing without the majority of its witnesses.

Parents argue that the hearing should proceed on the August dates to allow Parents resolution of the matter in time for the new school year, which begins on September 1, 2024, as Parents are unilaterally funding Student’s placement. Although the Hearing Officer is sensitive to Parents’ position, when Parents “make a unilateral choice, they must bear the associated [financial] risk.”[[10]](#footnote-10)

**ORDER:**

Plymouth’s request is ALLOWED for good cause.

**The Parties understand that this request extends the 45 day IDEA timeline and delays issuance of the Decision.**

The matter will proceed as follows:

1. The Hearing will take place via a virtual platform on **September 24, 25, and 26, 2024, 2024**. It will begin at 9:00AM and conclude at 5:00PM.
2. Exhibits and witness lists are due by the close of business day on **September 17, 2024**.

**Failure to appear at the Hearing may result in dismissal of the matter with or without prejudice.**

So Ordered by the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir

Dated: July 31, 2024

1. See BSEA Hearing Rule III (A); see also 34 C.F.R. §300.515. [↑](#footnote-ref-1)
2. See, e.g., Commonwealth v. Fall River Motor Sales, Inc., 409 Mass. 302, 307 (1991); Caira v. Zurich Am. Ins. Co., 91 Mass. App. Ct. 374, 384 (2017); In re: Quinn, 54 Mass. App. Ct. 117, 120 (2002). [↑](#footnote-ref-2)
3. See, e.g., Commonwealth v. Super, 431 Mass. 492, 496, 727 N.E.2d 1175 (2000); Commonwealth v. Clegg, 61 Mass.App.Ct. 197, 200 (2004); Com. v. Burston, 77 Mass. App. Ct. 411, 417 (2010). [↑](#footnote-ref-3)
4. Com. v. Borders, 73 Mass. App. Ct. 911, 912 (2009) (internal quotations and citations omitted). [↑](#footnote-ref-4)
5. Burston, 77 Mass. App. Ct. at 417. [↑](#footnote-ref-5)
6. See *Wanham v. Everett Pub. Sch*., 550 F. Supp. 2d 152, 158 (D. Mass. 2008)(“… under the BSEA hearing rules, postponements may be granted for good cause. Hearing Rules for Special Education Appeals, Rule III(A). With respect to each of the postponements, Everett stated a valid reason”). [↑](#footnote-ref-6)
7. Parents’ assertion that the District has already been granted a postponement is disingenuous, as the parties had jointly requested a postponement of the hearing on July 11 on the grounds that they had reached an agreement in principle. [↑](#footnote-ref-7)
8. Cf. Steir v. Girl Scouts of the USA, 383 F.3d 7, 12 (1st Cir. 2004) (when faced with a request or extension, a court's decision on good cause “focuses on the diligence (or lack thereof) of the moving party more than it does on any prejudice to the party-opponent”).   [↑](#footnote-ref-8)
9. Borders, 73 Mass. App. Ct. at 912. [↑](#footnote-ref-9)
10. *C.G. v. Five Town Cmty. Sch. Dist.*, 513 F.3d 279, 289 (1st Cir. 2008). [↑](#footnote-ref-10)