

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

In re: Preston¹

BSEA #2004002

**RULING ON NASHOBA REGIONAL SCHOOL DISTRICT'S THIRD (MID-HEARING)
MOTION TO POSTPONE**

This matter comes before the Hearing Officer on the Motion, filed mid-hearing by the Nashoba Regional School District (NRSD or “the District”), to Postpone the remaining days of the Hearing. This Hearing began on June 15, and 5 of the 8 scheduled days had taken place before the District filed its Motion by electronic mail² on Saturday evening, June 27, 2020. On Sunday afternoon, June 28, 2020, both Parents and the Department of Mental Health (DMH) filed Oppositions to NRSD’s *Motion to Postpone*.³

For the reasons below, Nashoba’s *Motion to Postpone* is hereby DENIED.⁴

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The factual background of this case was summarized in detail in my *Ruling on Nashoba Regional School District’s Motion to Postpone*, issued April 22, 2020. After considering the arguments offered by both parties,⁵ I concluded that postponement was unwarranted. In reaching that conclusion, I noted that although clinicians at Three Rivers, where Preston was (and remains) placed, did not appear to believe discharge was imminent, the process of identifying and securing an appropriate subsequent placement could be lengthy. As such, Preston might remain at Three Rivers beyond the time when discharge was appropriate, and this constituted a significant risk of prejudice to Parents (and Preston) in the event of a postponement.

Notwithstanding this *Ruling*, I later allowed a second postponement request by NRSD, over Parents’ objection, after discovery issues involving Three Rivers arose. I addressed these issues in my *Ruling on Three Rivers’ Motion to Vacate and/or Quash Subpoenas and Motion to Modify and Limit Subpoena Duces Tecum, and on Nashoba Regional School District’s Second Motion to Postpone*, dated May 8, 2020. At that time, the Hearing was scheduled for June 15, 16, 18, and 22, 2020.

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

² Filing by electronic mail is currently permitted by the BSEA due to the pandemic. See BSEA *Standing Order 20-02C*.

³ Parent and the Department of Mental Health (DMH) filed formal Oppositions on June 29, 2020.

⁴ I indicated as much in emails sent to the parties early in the morning on June 29, 2020, and entered an oral ruling into the record at the beginning of the day.

⁵ DMH neither joined, nor objected to, the District’s request for postponement.

During the practice Zoom Call that took place on June 9, 2020, it became clear that additional dates would be required for the Hearing. On that day, I issued an Order specifying that the Hearing would take place on June 15, 16, 18, 22, 23, and 24, 2020, from 10:00 AM to 6:00 PM each day except for June 18, when the Hearing would begin at 8:30 AM and end at 2:00 PM due to my availability.

Although I did not receive a written objection to my scheduling order, on the first day of Hearing, NRSD objected on the record to the Hearing going forward on June 23 and 24, 2020, because Joan DeAngelis, Director of Pupil Personnel, could not participate. According to the District, Ms. DeAngelis had previously scheduled vacation days, in order to bring a family member to a medical appointment, and neither the Superintendent nor any other District administrator could attend the Hearing in her place.

After much discussion regarding alternative dates, with little success, the parties agreed that all could be available for full days on June 22, 29, and 30, and partial days on June 18 and 24, 2020. This schedule change, memorialized in an Order issued June 17, 2020, required Preston's mother to reschedule her own medical procedure. The June 17 Order specified that the Hearing would go as late at 7:00 PM on June 29 and 8:00 PM on June 30, if necessary. I scheduled these longer days because at this point, I had received testimony from Three Rivers personnel to the effect that clinicians deemed Preston ready for discharge, and the only reason he remained at Three Rivers was because no appropriate placement had been identified and secured. As such, Preston was – and would remain – stuck there, essentially, until the Hearing had concluded and my decision had been rendered.

Although once again I received no written objection, on June 24, 2020, it was brought to my attention that Ms. DeAngelis would not be available past 6:00 PM on June 29 and 30, 2020, and she objected to the Hearing going forward in her absence. As such, another day had to be added to the schedule. On June 24, 2020, I issued an Order specifying that the Hearing would proceed on June 29 and 30, 2020 from 9:00 AM to 6:00 PM, and on July 1, 2020 from 10:15 AM to 5:00 PM.

In the meantime, at some point early in the week of June 22, 2020, Counsel for NRSD reported that Ms. DeAngelis had been in a car accident and would periodically step away from the camera. (Of note, I had explained before the Hearing began that I expected everyone to keep their video camera on throughout the course of the Hearing, to ensure confidentiality, and that individuals could step away as needed.) On June 24, 2020, Counsel for NRSD requested permission for Ms. DeAngelis to participate without her video camera, because she was caring for her family member. Parents objected, and I denied the request. Throughout the day, Ms. DeAngelis had the camera on and appeared to be seated nearby, but participants had only a partial view of her face most of the time. I held an off-record meeting with Counsel, during which I requested that Ms. DeAngelis be instructed to position herself within view of the camera for the remainder of the Hearing.⁶

⁶ In accordance with my authority and obligation under BSEA *Hearing Rule IX(A)* “to ensure that appropriate standards of conduct are observed and that the hearing is conducted in a fair and orderly manner,” I requested that Counsel for NRSD convey my instructions to her client.

By electronic mail at 6:25 PM on Saturday June 27, 2020, Counsel for NRSD requested a brief postponement of the last three hearing dates because Ms. DeAngelis had informed her that day that she was seen “by an orthopedist who had ordered an MRI due to injury her leg sustained last weekend. The physician has advised that she cannot work for the next two weeks.” According to the District, no administrator was available to fill in for her, and because it was mostly District staff slated to testify, Ms. DeAngelis was “not comfortable having the hearing proceed without her.” A brief postponement, NRSD asserted, would permit Ms. DeAngelis to participate and testify.

The following day, Parents filed an *Opposition*, objecting strenuously to any postponement of the Hearing. They noted that there “is no indication that Ms. DeAngelis is having any trouble listening or speaking due to her leg injury[,] . . . no claim that Ms. DeAngelis is unable to adequately participate in the ‘virtual’ Hearing[, and] there does not seem to be any indication that she requires medical intervention, other than resting her leg.” Moreover, Parents asserted, “It bears noting that Ms. DeAngelis suffered her injury over a week ago, participated in the Hearing on two days this past week, and apparently took her mother to medical appointments as well as caretook her mother at home.” Furthermore, the parties had already worked around Ms. DeAngelis’ availability for the Hearing, as the dates had been “carefully chosen based on her stated availability subsequent to sustaining her leg injury.” Finally, Parents argued, further delay would be prejudicial and educationally damaging to Preston because he cannot leave Three Rivers until an appropriate placement is identified and secured.

DMH filed its own *Opposition*, concurring in Parents’ objection and opposing NRSD’s request for postponement.

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.*

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.

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 that Postponement Be Denied

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. The *Hearing Request* in this matter was filed on October 17, 2019. The January 2020 dates initially established by agreement were postponed because of a Local Educational Agency (LEA) assignment matter filed by the District, and conflicts in representation connected with that matter. At the time, the parties acknowledged that Preston’s discharge from Three Rivers was not imminent, and the Hearing was scheduled for May. The brief postponement I granted in May, again over Parents’ objection, was necessitated by complex discovery issues relating to privacy and confidentiality, advanced by non-party Three Rivers.

The District’s third postponement request was made mid-hearing, over a weekend, far less than 6 days in advance. Preston’s mother has rescheduled her own medical appointments twice to accommodate the current schedule. Multiple discussions of alternative dates have already demonstrated that a postponement at this point would be until August or September, at the earliest. Evidence before me suggests that Preston is currently at Three Rivers awaiting my decision, not because the placement remains clinically necessary. Under these circumstances, the risk of prejudice to Parents of a delay is significant.

If this Hearing were occurring at the BSEA, and attendance required driving, walking, etc., I would excuse Ms. DeAngelis from appearing in person and permit her to participate remotely. As everyone is already appearing virtually by Zoom, no such accommodation is necessary. The District has had fair notice of these hearing dates and may have other administrators attend if Ms. DeAngelis is unable to participate for the entire time. As such, the risk of prejudice to the District of denying the postponement, while not negligible, is not significant.

Finally, Parents have properly issued a subpoena for Ms. DeAngelis’ participation in the Hearing. As nothing suggests that her leg injury prevents her from testifying from her home (in several smaller blocks, if necessary), consistent with my duty and power to regulate the presentation of evidence and participation of parties, I fully expect that Ms. DeAngelis will make herself available to testify on one or more of the remaining scheduled days of Hearing.

CONCLUSION

Upon consideration of Nashoba Regional School District's *Third (Mid-Hearing) Motion to Postpone*, the *Oppositions* filed by Parents and DMH, and the arguments advanced by all parties, I conclude that postponement is unwarranted.

ORDER

The District's *Third (Mid-Hearing) Motion to Postpone* is hereby DENIED.

The Hearing will proceed on June 29 and 30 and July 1, 2020, in accordance with the Order issued June 24, 2020.

By the Hearing Officer:

/s/

Amy M. Reichbach

Dated: June 30, 2020