

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

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

BSEA #2007894

**RULING ON PARENT’S MOTION FOR DISTRICT TO PRODUCE TEACHERS AND  
THEM PAY (*sic*) PER DIEM RATE FOR HEARING AND PARENT’S URGENT  
MATTER OF DISCOVERY/REQUEST FOR SANCTIONS**

This matter comes before the Hearing Officer on Parent’s Motion for District to Produce Teachers and Them Pay (*sic*) Per Diem Rate for Hearing, filed June 29, 2020, and Parent’s Urgent Matter of Discovery/Request for Sanctions, filed July 1, 2020. Both Motions were filed as responses to communications from Springfield Public Schools (Springfield or the District).

I. 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 Schools’ Motion to Postpone*, issued April 10, 2020, my *Ruling on Multiple Motions*, issued May 28, 2020, my *Ruling on Springfield Public Schools’ Second Motion to Postpone*, issued June 11, 2020, and my *Second Ruling on Multiple Motions*, issued June 11, 2020. Hearing dates of June 29 and 30 and July 13, 16, and 17, 2020 were established by my April 10, 2020 Order and have been repeated in multiple Orders since that time. Among other things, my *Ruling on the Springfield Public Schools’ Second Motion to Postpone* cancelled the first two Hearing dates, reaffirmed the July dates, and specified that Springfield’s responses to Parent’s discovery requests were due by close of business on July 3, 2020.

Following a Zoom Pre-Hearing Conference that occurred on June 19, 2020, I issued an Order scheduling the Hearing for July 13, 15, 16, and 17, with an additional date, if necessary, on August 24, 2020. The Order also provided that exhibits and witness lists are due by 3:00 PM on July 9, 2020.

Upon Parent’s proper, timely requests, subpoenas issued on June 24, 2020 for Nancy Retchin, Patricia Gray, and Dr. Mary Ann Morris, among others.

On June 26, 2020, the District, through Counsel, filed a letter regarding Springfield Public Schools’ witnesses who appear or may appear on Parent’s witness lists but are not included on the District’s witness list. According to Springfield, many District employees are not working, and thus are not paid, over the summer. “Consequently, if any District employee is

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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.

asked to testify or participate in any way in this hearing, they will need to be paid at a per diem rate. The District is not willing nor should it be required to pay for employees not on its list to participate in this hearing. Without payment, these witnesses cannot be required to appear absent a court order.”

On June 29, 2020, Parent responded with a *Motion for District to Produce Teachers and Them Pay (sic) Per Diem Rate for Hearing*. As Parent indicated, the hearing dates had been established for months, and during at least one Conference Call, the District had affirmed that all witnesses would be, and remain, available for Hearing in the event that it was postponed past June, 2020. The District also agreed to inform the Hearing Officer if any of the witnesses would no longer be available, so that their testimony could be secured prior to the end of the school year.

On July 1, 2020, Parent informed me by email that she had just been informed that she would not receive remaining discovery from the District, which is due by close of business on July 3, 2020, until the end of the day on July 6, 2020. Multiple emails ensued, and it became clear that the District does not intend to provide Parent with the answers to outstanding interrogatories until July 6, 2020, due to the holiday. Parent then filed a letter requesting that my Order regarding discovery deadlines be strictly enforced and the District be sanctioned, particularly as Springfield has had 30 days to comply with her requests, and exhibits and witness lists are due by 3:00 PM on July 9, 2020.

## II. DISCUSSION

### A. Relevant BSEA Rules

The BSEA *Hearing Rules* govern subpoenas and discovery. I will discuss each in turn.

#### 1. *Subpoenas*

Pursuant to BSEA *Hearing Rule VII*, the BSEA shall issue a subpoena when one is requested properly by a party. Such subpoena requests must be received by the Hearing Officer at least 10 calendar days prior to the hearing.<sup>2</sup> A person receiving a subpoena may request that Hearing Officer vacate or modify the subpoena, which the Hearing officer may do upon a finding that the testimony is not relevant or that the time or place specified imposes an undue burden.<sup>3</sup> If a person fails to comply with a properly issued subpoena, the party requesting its issuance may petition the Superior Court for an order requiring compliance.

#### 2. *Discovery*

BSEA *Hearing Rule V* governs informal and formal exchange of information. This Rule directs a party upon whom a discovery request is served to respond within a period of 30 days unless a shorter or longer period of time is established by the Hearing Officer.<sup>4</sup>

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<sup>2</sup> BSEA *Hearing Rule VII(B)*.

<sup>3</sup> BSEA *Hearing Rule VII(C)*.

<sup>4</sup> BSEA *Hearing Rule V(B)*.

B. Analysis

On June 3, 2020, Springfield requested postponement of the Hearing scheduled for late June and July. By Order dated June 11, 2020, I denied that request. Since that time, the District reiterated its request orally, and again it was denied. Though Springfield, through Counsel, represented to me several times that the personnel available to testify during the Hearing scheduled to begin May 15, 2020 would still be available should the Hearing be postponed, the District now appears to have reversed its position.

To the extent the BSEA has issued subpoenas for Springfield witnesses, the District has filed no motions to modify, vacate, or quash them. I fully expect that these witnesses will appear. To the extent Parent has not requested subpoenas for additional District employees, she has until July 3, 2020, given the 10-day requirement in the BSEA *Hearing Rule VII(B)*, to do so. As the District has known about the July Hearing dates since April, was aware that I denied its postponement request on June 11, 2020, has filed no motion to quash the subpoenas, and furthermore assured me that personnel would be available, requiring Parent to go to court to enforce her subpoenas would not only be premature but, I believe, a show of bad faith. Again, I fully expect that any, and all, District witnesses who are properly subpoenaed will appear. I encourage the parties to discuss the order of witnesses in advance to maximize efficiency.

As to discovery, Springfield has been aware of Parent's latest round of discovery requests for over a month, as it filed a *Motion for Protective Order* pertaining to these requests on May 27, 2020. I denied this request orally during the Zoom Pre-Hearing Conference on June 3, 2020, at which time we established that Springfield's responses were due by close of business on July 3, 2020. Springfield has never requested that I establish a different due date. There is no basis for the District to be informing Parent, approximately two days before these responses are due, that they will not be timely.

The District's decisions to inform Parent, 17 days before Hearing, that her duly subpoenaed witnesses would not appear for Hearing absent a court order, and to inform her, two days before its discovery deadline, that she would not receive all of the information she had requested, are not in keeping with the "appropriate standards of conduct" it is my obligation to ensure.<sup>5</sup> Should the District fail to produce properly subpoenaed witnesses and/or fail to meet its discovery deadlines, I will impose sanctions up to and including prohibiting Springfield from introducing its own evidence and/or witnesses at Hearing.

## CONCLUSION

Upon consideration of Parent's *Motion for District to Produce Teachers and Them Pay (sic) Per Diem Rate for Hearing* and Parent's *Urgent Matter of Discovery/Request for Sanctions*, and the communications related to these filings, both are hereby ALLOWED.

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<sup>5</sup> BSEA *Hearing Rule IX(A)*.

ORDER

The District is hereby ordered to produce all pending discovery, including answers to interrogatories, no later than close of business on July 3, 2020.

The Hearing will occur via Zoom on July 13, 15, 16, and 17, and August 24, 2020. The District is hereby ordered to produce all witnesses who have been properly subpoenaed.

By the Hearing Officer:

/s/

Amy M. Reichbach

Dated: July 2, 2020