

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

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In Re Ollie<sup>1</sup>

and

BSEA # 21-02164

Springfield Public Schools

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**Ruling on Pre-Hearing Motions**

The instant Ruling addresses three Motions, two related, one not: Parents' Motion to Amend her Hearing Request; the School's Motion for Summary Judgment; and Parent's Motion to Open the Hearing. The evidentiary Hearing is scheduled to begin on January 25, 2021.

I. On January 11, 2021, 8 working days before the scheduled start of the Hearing, the Parent filed a Motion to Amend her Hearing Request to include an additional issue she identified after reviewing documents provided to her by the School on December 18, 2020 in response to her Discovery Requests. The School filed an Opposition to the Amendment Request on January 14, 2021. As part of the Opposition the School submitted a Motion for Summary Judgment on the issue newly raised by the Parent, along with a pertinent Affidavit. Typically, the Parent would have 7 days to respond to the School's Motion for Summary Judgment. Given the rapidly approaching Hearing, however, an immediate Ruling is required on both Motions to permit the Parties to fairly prepare.

A. Parent Motion to Amend the Hearing Request

BSEA Rule I G provides for the Amendment of Hearing Requests when the original request is deemed insufficient and when, not less than 5 days before the scheduled Hearing, the opposing party assents or the Hearing Officer so orders. An Amendment is treated as if it were an initial Hearing Request and restarts the Hearing process.

Here, the Parent's Amendment Motion does not conform to the parameters of the applicable BSEA Rules. Ordinarily that would end the analysis. Here, however, the BSEA confronts a pro se litigant with incomplete understanding of, or ability to follow, standard BSEA procedures. She has identified an issue that is closely related, factually and legally, to claims already at play in the Hearing. The School has submitted a substantively relevant response, demonstrating that it will not be surprised by this new issue and that it can marshal a defense with minimal additional effort. Adding one more discrete issue to an already lengthy list will not pose a significant evidentiary or time burden for either party or for the Hearing Officer. Doing so would avoid the possibility of another Hearing Request focused solely on that new issue, increasing the efficiency of the administrative process. A balance of the equities weighs in favor of granting the Parent's request. Furthermore, under the unique circumstances presented in this matter, a minor amendment to the list of Hearing issues set out in the BSEA Pre-Hearing Order of January 11, 2021 does not warrant returning to and restarting timelines associated with an original Hearing Request.

Therefore, the newly added issue, #VI, identified by the Parent and framed by the Hearing Officer is:

- a) Whether the communications and /or meetings that took place between the School and representatives of [Ollie's] current special education placement immediately after the Team meeting of September 11, 2020 constituted a "Team" meeting pursuant to the IDEA?
- b) If so, did the failure to include the Parent in those communications/meetings deprive her of a meaningful opportunity to participate in the development of Ollie's IEP and/or deny Ollie a free, appropriate public education?

## B. School Motion for Summary Judgment

On January 14, 2021 the School submitted a Motion for Summary Judgment solely on the newly proposed issue. The School argues that the known facts establish that the meeting the Parent complains of was not a "Team" meeting and, therefore, the Parent had no IDEA entitlement to, or reasonable expectation of, participation. In essence, the School is offering and arguing a different version or interpretation of the pertinent facts than those presented by the Parent in her Motion to Amend.

The BSEA may dispose of an action, or a part of an action, by way of a Ruling on a Motion for Summary Judgment when there is no genuine issue of material fact relating to all or part of a claim or defense and the moving party is entitled to prevail as a matter of law. 801 CMR 1.01(7)(h).<sup>2</sup> Summary Judgment is appropriate in IDEA proceedings only when the parties agree on all the operative facts, supporting that agreement with documents and affidavits, and present a question of law for decision. The party seeking summary judgment bears the burden of proving that there are no genuine issues of material fact on every relevant issue. Moreover, when analyzing a summary judgment motion, all evidence and inferences are to be viewed in the light most favorable to the party opposing summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Patterson v. Time, Inc.*, 404 Mass. 14 (1989); *In Re: Boston Public Schools*, 25 MSER 37 (2019).

Here, the Parties' submissions establish a continuing factual dispute. Thus, disposal on a Motion for Summary Judgment is not appropriate.

## II. Parent Motion to Open Hearing to Public

On January 11, 2021 the Parent filed a Motion to open the Hearing scheduled to begin on January 25, 2021 to the public. The School filed an Opposition to a public Hearing on January 14, 2021 citing concerns about the behavior and language of the Parent during previous Hearings, about compromising the confidentiality of Ollie's personal and student information, and about protecting the privacy of School-affiliated participants.

The IDEA permits the Parent to request, and to have, a public hearing. U.S.C. 1415(f)(1); 34 CFR 300.509(c)(1)(ii). This issue has been addressed by the BSEA. In *Student v. Medford Public Schools*, BSEA#20-02451, November 6, 2019, Hearing Officer Figueroa found that the Parent's right to "open" a special education hearing may not be impeded by a school district or by the BSEA, no matter how misguided. That decision was pre-COVID. There has been no federal guidance on "open" hearings that would indicate a different approach to hearings during universal COVID precautions. There are no published precedents addressing "open" hearings in this, or other states.

Due to public health measures related to the COVID-19 pandemic, all special education hearings in Massachusetts are being held on a remote videoconferencing platform. While this platform offers the opportunity for audio/visual verisimilitude to in-person hearings, there are differences and challenges inherent in the medium. Technologically, there are limits to the size of the "public" that can be accommodated in a session.<sup>3</sup> So long as the people whose presence is required at the Hearing, *ie.* the Hearing Officer, the Court Reporter, the Parties and their representatives, and the witnesses, are in the videoconference "room", the "public" may use any remaining available space.

The next concern, significantly more problematic than space, is technological, legal and ethical in nature. When a hearing is limited to participants who are actually involved in the day-to-day life of the student and have pertinent knowledge of the history and parameters of the dispute, the Hearing Officer, the Parties and their lawyers may exercise a degree of supervision and/or control over the disclosure of the confidential student and family information that is routinely and necessarily discussed during an IDEA Hearing. For example, unauthorized disclosure of confidential student information by school personnel may result in serious professional consequences. (See *e.g.* FERPA<sup>4</sup>) That control evaporates when a hearing is open to the public. And that lack of control over student information and family privacy expands exponentially when sensitive information is available to unknown parties on electronic platforms. The BSEA has no authority to enforce restraints on the recording, duplication, exchange, publication, dissemination, disclosure, alteration, use or misuse of student or family information, images or voices. It is reasonably foreseeable that highly sensitive personal information about Ollie and the Parent could be made public and could result in significant personal and professional harm. It is doubtful that the framers of the IDEA anticipated the sort of

information world in which we currently find ourselves. Nevertheless, the plain language of the governing statute offers no alternative to granting the Parent's open hearing request.

The BSEA can, however, establish reasonable rules for access to a public hearing.<sup>5</sup> The BSEA may also ensure that the Parties whose information is supposed to be protected, Ollie and his Parent, make an informed waiver of their respective rights to privacy.

## **ORDER**

1) The Parent's Motion to Amend the Hearing Request is GRANTED.

2) The School's Motion for Summary Judgment is DENIED.

Issue # VI for resolution at Hearing is:

a) Whether the communications and/or meetings that took place between the School and representatives of Ollie's current special education placement immediately after the Team meeting of September 11, 2020 constituted a "Team" meeting pursuant to the IDEA?

b) If so, did the failure to include the Parent in those communications/meetings deprive her of a meaningful opportunity to participate in the development of Ollie's IEP and/or deny Ollie a free, appropriate public education?

3) The Parent's Motion to Open the Hearing to the Public is GRANTED with the following conditions:

To ensure that, to the extent possible on an electronic platform, confidentiality provisions are observed and that the necessary participants have priority access to the electronic platform, the Parties shall forward to the Hearing Officer and to the court reporter/videoconference administrator no later than January 21, 2021 the email address and cell phone number of every person it expects to attend the hearing. The Parties will then be informed of the number of remaining "slots" and any other information a member of the public might need to access the Hearing. The Parties may then share that information as they wish.

All individuals who intend to attend the Hearing for any reason, and for any period of time, must be present at the beginning of the Hearing for identification, equipment check and Hearing Officer instructions. Any person not then present will not be permitted to join later.

Both the Parent and Ollie must affirm, orally on the record and in writing, their knowing and voluntary request to open the Hearing to the public, their waiver of any privacy rights that might inure to them and to their personal information under any applicable federal or state statute or regulation, their waiver of any right to contest or litigate any issue that may arise from

intentional or unintended disclosure of their personal information by a member of the public attending the Hearing and, in particular, their assent to holding the BSEA, the Springfield Public Schools and Infraware/Catuogno Reporting Service and their affiliated personnel and contractors harmless for any publication, dissemination, alteration, use or misuse of their personal information, audio and images that may be made available to the public through this videoconferenced Hearing as a result of the participation of any individual not affiliated with the BSEA, Springfield Public Schools and Infraware/Catuogno Reporting Service.

By the Hearing Officer,

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Lindsay Byrne

Dated: January 19, 2021

<sup>1</sup> “Ollie” is a pseudonym chosen by the BSEA to protect the privacy of the Student and family in documents available to the public.

<sup>2</sup> See also M.R.C.P. Rule 56; P.R.C.P. Rule 56.

<sup>3</sup> The technical limit, however, is roughly equivalent to the capacity of a typical conference room used to house in-person hearings. When in-person hearings were “public”, attendance was naturally limited to the number of bodies that could fit comfortably in a room for 8-10 hours.

<sup>4</sup> Family Educational Records Privacy Act, 20 U.S.C. 1232(g); 34 CFR 300.99.3.

<sup>5</sup> See Rules of the District Court of Massachusetts concerning public access to proceedings during COVID restrictions.