## COMMONWEALTH OF MASSACHUSETTS

## DIVISION OF ADMINISTRATIVE LAW APPEALS

## BUREAU OF SPECIAL EDUCATION APPEALS

## 

In Re: Nelson[[1]](#footnote-1) & Taunton Public Schools BSEA #10-8142

**RULING**

At a Pre-Hearing conference held on October 14, 2010, the Parent requested that the BSEA enter an Order requiring the Taunton Public Schools to furnish a complete copy of Nelson’s school records to her without charge. Taunton opposed the Parent’s request asserting that it met its obligations under state and federal law to provide an opportunity for the Parent to “inspect and review” her son’s school file by ensuring that the Parent had full access to review the Student’s records during business hours. Taunton further stated that its uniform fee of .20 per page for provision of copies of any student record is consistent with Massachusetts and Federal student records regulations.

Massachusetts Student Record Regulations require a public school to provide “access” to a student’s complete record within ten days of a request by a parent or eligible student. 603 CMR 23.07 (2)(a) states:

(a) Upon request, copies of any information contained in the student record shall be furnished to the eligible student or the parent. A reasonable fee, not to exceed the cost of reproduction, may be charged. However, a fee may not be charged if to do so would effectively prevent the parents or eligible student from exercising their right, under federal law, to inspect and review the records.

(emphasis added). See also: 20 U.S.C. 1232 (g)(a)(1); 34 CFR 99.11(a)[[2]](#footnote-2), and comments; Massachusetts Department of Education Administrative Advisory February 8, 2005.

Thus the question for resolution here is whether Taunton’s proposed .20 per page copying charge would prevent the Parent from exercising her right to inspect and review the school records she needs in order to properly prepare for Nelson’s special education hearing?[[3]](#footnote-3) The Parent argues that she is indigent, is working during school hours, and is unable to properly review the Student’s voluminous records without copies to refer to at home. Taunton argues that its copying charge is imposed uniformly, that the student records are available for inspection by appointment at any time and for any length of time, and that the Parent has sufficient funds to cover copying costs for any necessary records.

There is no evidence on which I could make factual findings concerning the Parent’s claim of indigency or her assertion of impaired access to her son’s school records. Nevertheless, I note that the inherent difficulty in resolving the tension between parental claims of unequal access to rights and procedures guaranteed under special education law due to indigence, and the School’s interest in maintaining fiscal neutrality and health, is addressed in other sections of the Massachusetts Special Education Regulations. In the Section concerning public funding for independent evaluations, Massachusetts has taken the position that a student who has been found eligible for the subsidized school lunch program is also eligible for fully subsidized independent evaluation. 603 CMR 28.04(5). The regulation goes on to set out additional, standard financial criteria for other levels of public support for the exercise of the student’s right to an independent evaluation. That regulation presumes that a certain financial status, eligibility for subsidized lunch, means that any additional financial burden associated with a student’s education would “effectively prevent” the student from receiving the full procedural and substantive benefits otherwise available to her/him under the IDEA. As it provides an objective measure of financial hardship, as opposed to the subjective standard set out in 603 CMR 23.07, it is helpful to borrow from that regulatory section in assessing whether or not lack of funds, or conversely a requirement to advance funds, for a particular school related service, would present a barrier to full exercise of the Student’s right to a free appropriate public education. I therefore adopt the intent and the criteria set out in 603 CM 28.04 (5) and apply it to the circumstances in this matter.

The parent has claimed indigency and asserted that the Student is eligible for subsidized school lunch. If true, imposition of a copying charge would impair her right to review and obtain copies of the Student’s school records in preparation for a special education hearing. Once the Parent has demonstrated financial hardship in the customary manner for determining eligibility for fee waivers under other sections of the special education regulations, that determination of hardship may be presumed to exist for all potential fees a school might impose. When those fees affect the equitable and free exercise of rights afforded to non indigent parents and students, they present an unlawful barrier to a student’s entitlement to FAPE. Therefore, consistent with both federal and state law guaranteeing parental access to a Student’s education records under 20 U.S.C. 1232 and with the special education evaluation, planning, programming and hearing procedures under 20 U.S.C. 1401 et seq., I find that upon suitable proof of financial hardship, the Parent must be afforded one copy of Nelson’s student records without charge.

**ORDER**

Taunton Public Schools shall waive imposition of its standard .20 per page copying charge on one copy of each of Nelson’s student records. Taunton shall insure that a complete copy of Nelson’s school record is made available to the Parent in this matter no later than November 10, 2010.

By the Hearing Officer

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Dated: October 26, 2010

1. “Nelson” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. [↑](#footnote-ref-1)
2. Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student’s education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student. 34 CFR 99.11 (a). [↑](#footnote-ref-2)
3. I note that “pure” student records disputes are within the jurisdiction of other hearing procedures: the Family Policy Compliance Office in matters involving 34 CFR99, and the challenged school district’s superintendent and school committee pursuant to 603 CMR 23.09. [↑](#footnote-ref-3)