

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In Re: Uriel¹

&

BSEA #1503636

Westwood Public Schools

ORDER

A conference call was held on February 26, 2015 at which arguments were heard on several outstanding Motions. Pursuant to those arguments the following orders are entered:

1.) Westwood's Motion to Compel Compliance with a Subpoena Duces Tecum issued to the Community Therapeutic Day School ("CTDS"), a non-party, for the purpose of discovery is DENIED. Westwood originally sought extensive information concerning the Student at issue and the program characteristics of CTDS, including copies of partially redacted IEPs for students other than Uriel, identification of students treated by/referred by the Parents' named expert, records of board meetings, committees, outreach and fundraising activities in which the Parents' expert had participated, a record of any funds transferred from CTDS to the expert and a record of all donations made by the expert or any member of her family to CTDS.

CTDS responded promptly and fully to most of the document requests in the subpoena, but objected on the grounds of relevance to providing board minutes and committee reports, as well as to identifying students with whom the expert might have a treatment or referral relationship. Westwood argued that it needed the requested documents to fully explore and expose any pecuniary relationship between the Parents' expert and CTDS that could indicate impermissible or discrediting bias.

¹ "Uriel" is a pseudonym selected by the Hearing Officer to protect the privacy of the Student in documents available to the public.

After careful consideration I find that the documents withheld by CTDS have little relevance to the issue to be decided in this BSEA appeal: whether Westwood offered Uriel an Individualized Education Program for the 2014-2015 academic year that is reasonably calculated to ensure his receipt of a free appropriate public education. The documents Westwood seeks through this subpoena do not advance the Hearing Officer's understanding of the Student or the issues, will not lead to admissible evidence, and are overly intrusive and burdensome without countervailing benefit. In particular I find that the requested documents are not necessary to raise or prove any type of potentially tainting bias on the part of the Parents' expert, the stated purpose of Westwood's request. While the existence of relationships that could affect the credibility of any witness, and therefore the weight to be accorded to the witness's opinion or expertise, is an appropriate avenue for exploration, it suffices for BSEA purposes to elicit acknowledgement of those relationships through testimony or less intrusive discovery devices. Here, where there is no dispute about the nature and extent of the expert's involvement with the private school the Student attends, the type and extent of Westwood's document request is unnecessary, unreasonable and unhelpful to the BSEA process.

2.) The Parent²'s Motion to Quash the Subpoena Duces Tecum issued by Westwood to the Parent seeking financial records reflecting donations made by the Parent and various named Trusts to Children's Hospital since January 2002 is **GRANTED**, for 2 reasons.

First, the subpoena does not conform to BSEA Rule VIII B which provides in pertinent part:

A party may also request that the subpoena duces tecum direct that documents subpoenaed from a non-party be delivered to the office of the party requesting the documents prior to the hearing date. (emphasis added)

As the Parent is a Party the section concerning the use of subpoena duces tecum as a discovery tool is not available to Westwood.

Second, the requested information is not relevant to the issues to be decided in this matter which, by agreement of the parties, involve the Parents' request for reimbursement of expenses they incurred in connection with Uriel's unilateral placement in a special education day school after the Parents rejected Westwood's proposed IEPs first for an in-district program, and later for a Collaborative placement. The information sought by Westwood would not advance the Hearing Officer's understanding of the stated issues, nor lead to admissible evidence. On the contrary the information sought is so far from

² Although the Parents are jointly Parties to this appeal, the subject Westwood subpoena is directed solely to one Parent.

relevant in this type of administrative hearing, and so personally intrusive, as to raise serious concerns as to Westwood's intent in issuing the contested subpoena.

3.) The Parents' Motion for a Protective Order Regarding Harrassing Subpoena(s) of Non-Parties is DENIED. Westwood has issued subpoenae duces tecum to at least nine other individuals, including five members of the Children's Hospital Board of Trustees in their individual capacities, seeking among other things, financial information concerning the Parent. The Parents' request that the Bureau issue a Protective Order prohibiting Westwood from using subpoenae duces tecum in this manner or for this purpose. While I find Westwood's practice in this regard troubling and highly unusual, the proper avenue in the first instance to address objectionable discovery requests such as these is a Motion to Quash.

A Motion to Quash the subpoenae related to Children's Hospital is scheduled to be heard this week.

Should there be showing in the future of a continuing pattern of issuing subpoenae that are not carefully designed to elicit information directly relevant and admissible in this special education hearing a protective order may then be necessary.

By the Hearing Officer

Lindsay Byrne
Dated: March 3, 2015