

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

In re: Eleanor¹

BSEA #1503787

**RULING ON PARENTS' MOTION FOR CLARIFICATION OF HEARING OFFICER'S
ORDER**

This matter comes before the Hearing Officer on the Parents' Motion, filed on January 23, 2015 and styled a "Motion for Clarification of the Hearing Officer's Order."² Rather than seek clarification, however, the Parents' Motion does the following: (1) challenge the Hearing Officer's previous ruling by arguing that the release of redacted records containing no personally identifiable information constitutes a violation of the Family Educational Rights and Privacy Act; (2) request that the Hearing Officer provide "specific information as to exactly what records will be forwarded, what exactly will be and must be redacted on each record and on each page of the records;" and (3) threaten "all parties including but not limited to the District and the Receiving Schools" with legal action.

The factual background and procedural history of this matter will not be repeated, as they were summarized in the January 20, 2015 Ruling on the *Pembroke Public Schools' Motion for Substitute Consent to Issue Referral Packets* (hereinafter "*District's Motion for Substitute Consent*") and expanded upon in the January 21, 2015 Ruling on the *Parents' Emergency Motion for Neuropsychological Evaluation*.

As to their first objective, if the Parents seek to overturn the Hearing Officer's determination that the Pembroke Public Schools (hereinafter "the District") may send redacted packets to potential placements in order to meet its obligations to Eleanor under the Individuals with Disabilities Education Act, they cannot do so by offering new arguments in a Motion for Clarification.³

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

² The District filed an Opposition to the Parents' Motion for Clarification of the Hearing Officer's Order on January 26, 2015, arguing that the clarification requested by the Parents had already been provided in the Ruling itself.

³ Though I need not address the Parents' attempt to appeal or obtain reconsideration of my previous Ruling by way of a Motion for Clarification, I do so for purposes of efficiency as the Parents might otherwise attempt to make this fallacious argument through other means. The Parents, through their Advocate, rely on an unattributed, uncited source entitled "FERPA Clear and Simple" to support their argument that the District's "request and subsequent approval from the Hearing Officer's Order, to release redacted information from the student's records will violate the FERPA regulations because it is by definition a 'targeted request.'" *Parents' Motion for Clarification of the Hearing Officer's Order* at p. 1. First, the January 20, 2015 Order actually constituted a denial, and not approval, of the Pembroke Public Schools' (hereinafter "the District") Motion for Substitute Consent to Issue Referral Packets. Second, no request has been made by anyone for any personally identifiable information regarding Eleanor. In order to find a suitable placement for Eleanor so that it may meet its obligations under the Individuals with Disabilities Education Act to provide her with a Free Appropriate Public Education, the District will be sending out referral

As to the Parents' second objective, the previous ruling specified precisely what must be redacted from Eleanor's records in order for the District to comply with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA"), and that ruling speaks for itself.

The Parents' third objective requires no response from the Hearing Officer.

As noted in this Hearing Officer's Ruling on the *District's Motion for Substitute Consent*, the Parents' Advocate has failed to appear for three conference calls in this matter. Should the Parents seek further action from the BSEA, including actual clarification of previous Orders, they are hereby directed to instruct their advocate to respond to the BSEA's attempts to schedule conference calls and/or further proceedings.

CONCLUSION

Upon consideration of the Parents' Motion for Clarification of the Hearing Officer's Order and the District's Opposition thereto, as well as the relevant documents submitted by the parties, I find that the previous ruling does not require clarification.

packets redacted of all personally identifiable information to placements it has identified as potentially appropriate for Eleanor. This action is not taken in response to a request from "a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates," which would be prohibited under 34 CFR § 99.3 (g). Moreover whether, as the Parents assert, "the receiving party will still be able to identify the student when the Parents call to schedule a tour of the facility with their daughter," is not relevant to whether the District may, without violating FERPA, send redacted referral packets. Nor is the Parents' claim that "without that [personally identifiable] information, the schools cannot ethically or professionally make any determination as to the student's placement in their school." If the parents are concerned about the former issue they may decide not to visit the potential placements until their daughter is accepted, or to visit before packets are sent out, to minimize the number of schools that make the connection. As to the latter issue they may decide to release voluntarily to the placements the information they believe is needed to make a sound determination regarding Eleanor.

ORDER

The Parents' Motion for Clarification of the Hearing Officer's Order is hereby DENIED.

The parties are directed to provide the BSEA with their availability for a Pre-Hearing Conference to take place at the BSEA on February 5, 9, 10, or 15, 2015 no later than close of business on February 5, 2015.

By the Hearing Officer:

Amy M. Reichbach
Dated: February 3, 2015