

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

In Re: Student v.
Scituate Public Schools

BSEA# 1702015

Ruling on Parent Consultant’s Motion to Quash and Vacate a Subpoena; Ruling on Scituate Public Schools’ Motion for an Order of “Stay Put”; Scituate Public Schools’ Motion to Compel Parents’ Responses to First Request for Production of Documents and First Request for Interrogatories; Parents’ Motion for Interim Order for Placement of the Student; Parents’ Motion for Protective Order; Parents’ Motion for Public Record of Private Settlement Agreements; Parents’ Motion For Not Obeying a Discovery Order

On September 7, 2016, Parents filed a Hearing Request in the above-referenced matter. On September 20, 2016, Scituate Public Schools (Scituate) requested a postponement of the Hearing, which request was granted for good cause. The same date, the Parties also communicated about other matters (Student’s measurements for a harness, which Student required for transportation and which according to Parents, had to be custom fit; and Parents’ objection to being charged a fee for copies of Student records).

The Parties participated in a telephone conference call on September 26, 2016, at which time, Parents (who are pro-se) and Scituate agreed to participate in a Pre-Hearing Conference on November 8, 2016.

Soon thereafter, Scituate served a subpoena *duces tecum*¹ on Diane Bartlett, Parents’ former consultant. On October 5, 2016, Ms. Bartlett filed a Motion to Quash and Vacate a Subpoena arguing that: a) copying the voluminous record would cause an undue financial burden, and b) some of the documents requested, specifically medical records, were privileged and she could not release them without a court order.

On October 14, 2016, Scituate filed an Opposition to Parents’ Consultant’s Motion to Quash Subpoena. Scituate relies on Rule VIII B of the *Hearing Rules for Special Education Appeals*, allowing a party in a BSEA proceeding to serve a subpoena *duces tecum* on a non-party requesting that documents be produced to the office of the requesting party prior to Hearing,² asserting that the documents requested are thought to be relevant and reasonably calculated to lead to the discovery of admissible evidence. Scituate seeks documents and communications related to Student which were created or maintained by Ms. Bartlett or on her behalf.

¹ These subpoenas were not served through the BSEA.

² Scituate further relies on M.G.L. c. 30A §12(3).

Scituate argues that Ms. Bartlett in a non-attorney, educational advocate employed by Parents and that documents in her possession regarding Student's IEPs, IEP process and placements, are relevant to the instant matter. Moreover, Scituate disputes Ms. Bartlett's allegations that any privilege extends to medical records in her possession since she is not covered by the Health Insurance Portability and Accountability Act (HIPAA). Scituate further argues that, legally, Ms. Bartlett bears the cost of compliance and burden of proof regarding production of documents in her possession. Since according to Scituate no privilege extends to Ms. Bartlett or to the documents in her possession, the District requests that Ms. Bartlett's Motion to Quash the subpoena be denied in its entirety.

On November 8, 2016, the Parties participated in a very lengthy Pre-hearing Conference during which they reached partial resolution of this matter, agreeing to certain terms. Those terms are reflected in Post Pre-Hearing Order issued on November 10, 2016 which is hereby incorporated by reference. Given its length, it will not be here repeated. The Parties are, however, re-directed to the Order for the specifics regarding the Pre-hearing agreements.

On November 15, 2016 Parents submitted a Physician's Statement for Temporary Home or Hospital Education³ (Physician's Statement) a copy of an email Parents forwarded to Dianna Mullen (Scituate), Andrew Evans and Susan Dupuis (of Marshfield Public Schools).

On or about November 17 or 18, 2016, the BSEA received Parents' Objection to Subpoenas issued by Scituate to Parents' private providers. The Objection does not name the specific individuals to whom Parents refer. Parents argued that they had not received copies of all of the subpoenas issued by Scituate and state their desire to have a conversation with Scituate to discuss which documents the district desires which they may be able to produce. Parents also state that they and Student have unspecified rights which Scituate disregarded. Via a separate one sentence document received the same date, Parents requested that the Motion to Quash Ms. Bartlett's subpoena *duces tecum* be granted.

On November 18, 2016 Parents filed a status report stating that Scituate had rejected Parents' request for home tutoring and noted that Student's providers were in the process of preparing supplemental information. Parents indicated they would provide a more detailed progress report by November 21, 2016.

Scituate filed a Motion for an Order of "Stay Put" to the Therapeutic Learning Center at the Governor Winslow Elementary School on November 18, 2016.

On November 23, 2016, Scituate filed a Motion to Compel Parents' Responses to First Request for Production of Documents and First Request for Interrogatories, and an Opposition to Parents' Objections to Scituate's Subpoenas *Duces Tecum* and Parents' Motion to Quash Subpoenas.

³ See 603 CMR 28.03(3)(c).

On November 25, 2016, Parents filed a Progress Report Affidavit and Issue of Candor With The Court-Dealing With The Misleading Opponent.

Also on November 25, 2016, Parents filed a Motion for Protective Order (regarding objections to SE-D and consideration of any information regarding Student's truancy case), Motion for Public Record of Private Settlement Agreements, a Motion For Not Obeying a Discovery Order, and a Motion for Interim Order for Placement of the Student.

On December 2, 2016, Scituate filed a Response to Parents' Affidavit and Motions of November 25, 2016.

Facts:

The facts stated herein are considered to be true solely for the purpose of these Motions.

1. Student is a six year old resident of Scituate who has been found eligible to receive special education services under an IEP due to a Social/Emotional Impairment, Health Impairment (ADHD) and Developmental Delay.
2. A note from Student's Physician (Dr. Ourania, G. Madias) dated September 15, 2015 notes that Student has severe mood dysregulation and states that attending "regular school" is "disturbing to him and psychologically painful". Dr. Madias noted that Student "deserved an evaluation at a therapeutic school setting" (SE-E).
3. In January 2016, Student was placed in a substantially-separate program at the Therapeutic Learning Center kindergarten (TLC) at Governor Winslow Elementary School (GW) within the Marshfield Public School District (Marshfield), under an accepted IEP (SE-A). Student attended this program through June 17, 2016, the end of the school year (SE-B; SE-D).
4. Between January and June 2016, Student was absent from school ten days (SE-B).
5. According to Susan Langill, Student's special education teacher at the TLC, except for two incidents on or about January 25, 2016 (while entering school and during transportation back home), Student's behavior in school was appropriate, and he did not present any risk to himself or others. Student fully participated in all school activities including lunch, recess, specials, academics and pull-out services, and he demonstrated eagerness to learn (SE-B).
6. Regarding Student's social emotional services, Ms. Langill noted that the focus of the program was on "identification of feelings, social skills development and strategies for re-regulation" (SE-B).
7. Ms. Langill described Student as polite, cooperative, highly compliant and observant of the classroom rules. He displayed a good sense of humor and age appropriate skills. During his tenure in Marshfield, Student's peer and adult interactions were respectful and positive (SE-B).
8. According to Ms. Langill, Student flourished in his partial inclusion program and he made "effective academic progress in the general education curriculum" and toward the goals and objectives in his IEP (SE-B; SE-C).

9. In the summer of 2016, Student attended 19 of the 23 days in his extended school year program, which ran from June 28 to August 4, 2016 (SE-B).
10. Ms. Langill opined that the TLC was an appropriate placement for Student and, based on student's behavior while at the program, she had no safety concerns regarding his or others (SE-B)
11. TLC's nurse's report provided a chronology of non-significant visits to the nurse's office (SE-H).
12. Student has not attended school for the 2016-2017 school year to date (SE-D).⁴
13. Parents filed a Hearing Request with the BSEA on September 7, 2016, seeking a 45-day extended evaluation for Student at the South Shore Educational Collaborative (SSEC).
14. Parents submitted Physician's Statements for Temporary Home or Hospital Education⁵ (Physician's Statement), on September 9, 2016 (covering an indeterminate period of time due to a diagnosis of mood disorder) and on September 29, 2016 (providing the same information and stating that Student had learning disabilities) (SE-D).
15. Ms. Mullen wrote to Student's physician on October 3, 2016, requesting the additional information regarding the specific reason for which Student could not attend school and requesting specificity as to the day Student would return to school.
16. On September 26, 2016, Robert Wolff, MD, Student's neurologist, wrote a letter stating that Student was under his care and that he carried a diagnosis of attention deficit hyperactivity disorder, dyslexia, disruptive mood dysregulation disorder, as well as phonetic integration deficiencies. Dr. Wolff had last seen Student in mid-July 2016 (SE-H).
17. After each of these Physician Statements, Ms. Mullen wrote to Parents (on October 3 and October 6, 2016) denying the requests because they did not meet the regulatory standards for home tutoring services. The October 3, 2016 response noted that the Physician's Statement required at a minimum information regarding:

...the date the student was admitted to a hospital or was confined to home; the medical reason(s) for the confinement; and what medical needs of the student should be considered in planning the home or hospital services. See *Massachusetts Department of Education (DOE) Question and Answer Guide on the Implementation of Educational Services in the Home or Hospital*, 603 CMR 28.03 (3)(c) and 28.04 (4)(issued February 1999, revised February 2005). The intent of the home/hospital tutoring regulation is to provide a student with the opportunity to make educational progress even when a physician determined that the student is **physically unable** to attend school. The regulation is not a means to object to [Student's] current or proposed

⁴ At present, a Complaint is pending before the Plymouth County Juvenile Court pursuant to M.G.L. c76 §2, for failure to send Student to school (SE-D).

⁵ See 603 CMR 28.03(3)(c).

educational program, placement and/or services (SE-D). (Emphasis in original).

Ms. Mullen further noted that the Physician's Statement was contrary to Parents' assertion that Student was available to attend SSEC (SE-D).

18. Sometime in September 2016, Parents wrote to the Physician seeking clarification from the Physician. A Physician's Statement dated September 29, 2016, offered additional language stating that because of Student's "at risk behaviors" a 45-day assessment at SSEC was recommended "to fully support [Student's] needs". The Physician's Statement further noted that "a tutor is not equipped to manage [Student's] needs" (SE-E). Once again no set date for Student to return to the Scituate placement in Marshfield was provided (SE-E).
19. A Pre-hearing Conference was held on November 7, 2016, as a result of which a Post Pre-hearing Order was issued on November 10, 2016, reflecting the agreement of the Parties and containing additional orders and deadlines for completion of tasks.⁶ The Post Pre-hearing Order also addressed the Parties' verbal inquiry regarding stay-put, and noting that stay-put was Student's TLC kindergarten program (SE-F). At the Pre-hearing conference Parents agreed to have Student attend the TLC program while the BSEA action was pending and requested a start date approximately a week later (*Id.*). Parents also signed an evaluation consent form for Scituate to proceed with a Functional Behavior al Assessment of Student at home, in the community and in school, which evaluation would be initiated when Student began attending school (SE-H; SE-I).
20. Dianna Mullen, Scituate's Director of Special Education, wrote to Parents on November 14, 2016. Ms. Mullen's letter was responsive to the BSEA's Order of November 10, 2016 and reflected the agreements between the Parties regarding school-based and independent evaluations, transportation issues, communication logs, and listing the questions Parents would present to their providers (SE-C; SE-H). An evaluation consent form (a typed version of the hand-written one signed by Parents at the Pre-Hearing Conference) was attached to her letter
21. On November 15, 2016, Ms. Mullen wrote to her attorney seeking advice on how to proceed. She noted that despite the District's and Marshfield's multiple attempts to have Marshfield's Physical Therapist conduct the harness fitting for Student, Student had not been made available and the van could not transport Student unless Student had a fitted harness (SE-G).
22. On November 15, 2016 Parents submitted a third Physician's Statement (dated November 14, 2016) which noted that Student presented with mood dysregulation, mood disorder, generalized anxiety, and ADHD. The Physician's Statement noted that Student would be out of school until February 2017 and that home services were required because of "serious legal conflict between school and parents, fear and

⁶ Documents were not submitted prior to the Pre-hearing Conference. Guidance on stay-put was offered based on the Parties' verbal representations and limited documents, such as, the accepted IEP and a Physician's note referenced in Fact #18 recommending that Student be educated at South Shore Educational Collaborative rather than at home or in a hospital.

distrust” (SE-E). No additional information or medical reason for Student’s need to be out of school was offered. Attached to the Physician’s Statement was a copy of an email Parents forwarded to Dianna Mullen (Scituate), Andrew Evans and Susan Dupuis (of Marshfield Public Schools) referencing the Physician’s Statement Parents forwarded later that day, and noting Parents’ request that home tutoring be offered “during the stabilization period”. In the letter Parents stated that they would also forward the letter and Physician’s Statement to the BSEA, seeking further guidance (SE-E; SE-J).

23. Since Student did not return to Marshfield, Scituate has not been able to conduct the FBA pursuant to the terms of the evaluation consent form signed by Parents on November 8, 2016.

Rulings and Conclusions of Law:

I. Ruling on Ms. Bartlett’s Motion to Quash and Vacate a Subpoena:

For the reasons stated in Scituate’s Opposition, Ms. Bartlett’s Motion to Quash and Vacate a Subpoena is **DENIED**.

Ms. Bartlett is not a licensed attorney and she no longer represents Parents/Student, therefore, there is no privilege (such as the attorney-client or the work-product privilege) which extends to her. Moreover, relying on *In Re: Mattapoisett Public Schools, Ruling on Motion for Protective Order*, BSEA# 06-6153 (Feb. 8, 2007) (quoting Mass. R. Civ. P. 26(b)(1)) and *In Re: Zebulon & Quincy Public Schools, Ruling on School’s Motion for a Protective Order*, BSEA #1600059 (Sept. 2, 2015)⁷ non-privileged discovery requests, relevant to the subject matter of the pending action must be produced even if the information is not admissible at the hearing as long as the “information sought appears reasonably calculated to lead to the discovery of admissible evidence.” The information sought by Scituate appears to fall squarely within this definition and as such shall be produced.⁸

Ms. Bartlett shall produce the documents sought by Scituate within ten calendar days of the date of issuance of this Ruling.

II. Scituate’s Opposition to Parents’ Objections to Scituate’s Subpoenas *Duces Tecum* and Parents’ Motion to Quash Subpoenas:

Scituate argues that its *Subpoenas Duces Tecum* to “Providers”⁹, should not be quashed because Parents assert that Student requires a therapeutic program, and challenge Scituate’s

⁷ “Information that is, or may be, relevant to any aspect of a Student’s appeal, no matter how tangential it may seem to be at the time of the request, should be shared absent a reasonable showing of privilege, harassment, intrusiveness or unequivocal irrelevance.”

⁸ The actual subpoena was not submitted for review.

⁹ Robert Wolff, M.D., Plymouth County Juvenile Fire Setting Intervention Program, the Boston Center (including but not limited to Dana Mehsil, MA, R-DMT), Neighborhood Health Plan and/or Neiani Harting, M.Ed., Parent

proposed program on the basis that it is not therapeutic, and does not comport with the recommendations of their experts. Thus, since Student's social, emotional and behavioral presentation, as well as the opinions of Student's "Providers" are at the center of the instant dispute, the documents it seeks are pertinent and relevant.

While Scituate is correct that the information it seeks appears to be relevant and is likely to lead to the discovery of admissible evidence, some of the information may be protected by statute. Here, Parents invoke HIPAA¹⁰ protections. Scituate argues that HIPAA protections are not applicable to the entities it subpoenaed, but concedes that other confidentiality privileges may apply. Scituate further argues that Parents must also make specific (non-generalized objections) regarding privilege and or the alleged undue burden the subpoenas place on the Providers. I note that none of the aforementioned providers sought to quash the subpoenas, they simply appear to have ignored them.

Scituate is not persuasive in its argument that some of the individuals on whom subpoenas have been served are not covered by HIPAA because some of those individuals are medical providers treating Student. Scituate concedes the privilege extending to confidentiality of communications between doctors, licensed social workers, psychotherapists and similar providers and their patients, but argues, consistent with previous BSEA rulings, that where a student's mental health or emotional condition is at the core of a BSEA proceeding, introduction of this information may be necessary and therefore exempted from the privilege.

A BSEA Hearing Officer may consider "whether disclosure of confidential information may disrupt a therapeutic alliance necessary to meet effectively the student's special education needs, thereby undermining the very purpose of the special education program, or whether these risks are not substantial and disclosure is necessary to protect a party's due process rights, or to inform adequately the hearing officer regarding an issue in dispute." *Nashoba Regional School District*, 10 MSER 98 (2004).

Scituate argues that there is no basis to believe that the relationship between Student and his providers would be disrupted by having the providers produce the records requested. In arguing that Student's mental, emotional and behavioral health is at dispute and that the information contained in the documents sought by Scituate supports Parents' contentions, Parents have in effect waived any privilege according to Scituate. Moreover, Scituate argues that disclosure of the information is crucial to adequately inform the Hearing Officer about the issues in dispute. I agree. Whereas in the case at bar Parents are relying on information and recommendations allegedly made by the Providers in their quest for the therapeutic

Advisor, Northeast Behavioral Associates, Metro Boston Office (including but not limited to service providers Bob Tracy and/or Katelin Swan, M.Ed.), Calvin Smith and/or Massachusetts Mentor, Harvard Vanguard Medical Associates (including but not limited to Asama Khandekar, M.D., Michael Whitner, M.D., and Ourania Madias), and Bayview Associates, Quincy of South Shore Mental Health.

¹⁰ Health Insurance Portability and Accountability Act. This Act protects health plans, healthcare clearinghouses, healthcare providers, and other individuals working for or on behalf of such entities from using or disclosing protected health information. See 45 CFR §160.103; 45 CFR 164.502(a).

placement of their choice, Parents have waived the privilege. As such, information by those individuals is relevant to the dispute and therefore, must be produced.

This information will however be handled cautiously. Scituate may not share it with individuals not qualified to offer an opinion, may not make multiple copies of these records and after the Hearing, all copies (other than those maintained in the BSEA file) shall be destroyed.

Parents' Motion to Quash subpoenas to the Providers is **DENIED**.

III. Ruling on Scituate's Motion for an Order of "Stay Put" to the Therapeutic Learning Center at the Governor Winslow Elementary School and Parents' Motion for Interim Order for Placement of the Student:

Student has not attended school for the 2016-2017 school year, and Parents have filed three requests for home tutoring, which requests the District denied because they failed to meet regulatory requirements (SE-E; SE-F).

Scituate argues that Parents have refused to send Student to school (using the Parties' legal differences as an excuse) in an attempt to force Scituate to change Student's placement to the South Shore Collaborative where Parents seek a 45-day assessment placement.

Scituate relies on Parents' last agreed upon placement dated January 2016 calling for Student to attend the TLC in Marshfield.

Under federal and Massachusetts special education laws and regulations, during the pendency of any special education dispute, eligible students have a right to remain in their then current placement (consistent with the last agreed upon IEP) unless the parents and the school district agree otherwise or unless a Hearing Officer or Judge orders a different placement. This right is commonly known as "stay put". 20 USC §1415(j); 34 CFR 300.518(a); (7)20 USC §1415 (e)(3); G.L. c.71B §3; 603 CMR 28.08.

While the January 2016 IEP would appear to be dispositive regarding Student's stay put placement, the Physician's Statements must first be addressed.

Under regular circumstances a properly completed Physician's Statement trumps any other placement because it presumes a student's temporary unavailability to be educated within a school setting because of medical reasons. 603 CMR 28.(3)(c) specifically provides,

(c) Educational services in home or hospital. Upon receipt of a Physician's written order verifying that any student enrolled in a public school or placed by the public school in a private setting must remain at home or in a hospital on a day or overnight basis, or any combination of both, for medical reasons and for a period of not less than 14 school days in any school year, the principal shall arrange for provision of educational

services in the home or hospital. Such services shall be provided with sufficient frequency to allow the student to continue his or her educational program, as long as such services do not interfere with the medical needs of the student. The principal shall coordinate such services with the Administrator of Special Education for eligible students. Such educational services shall not be considered special education unless the student has been determined eligible for such services, and the services include services on the student's IEP.

Here, review of the three Physician's Statements submitted by Parents show that none of the Physician statements met regulatory requirements. In fact, the statements are contradictory. They fail to state any medical reason why student must be educated in the home: one offers no reason; another states it is due to the "serious legal conflict between the school and the parents, fear and distrust"; another states that Student has learning difficulties; and yet another states that student is at risk, specifically that "a tutor is not equipped to manage [Student's] needs" and recommended a 45 day assessment at SSEC. Not one offers a medical reason why Student must be educated in the home or hospital. Moreover, except for the November Physician's Statement the others state "not clear" for an expected return to school date.

The sole document potentially helpful to Parents' position is Dr. Madias' note dated September 15, 2015 stating that "regular school is very disturbing" to Student as well as "psychologically painful" and recommending an evaluation at a therapeutic school setting. This document however presumably triggered Student's placement in Marshfield in January 2016. Therefore, it cannot be used in conjunction with Parents' current, renewed request for home tutoring. Furthermore, placement at South Shore Educational Collaborative is the ultimate question to be decided at a Hearing on the merits.¹¹

In their Motion for Interim Order for Placement of the Student, Parents argued that Scituate chose to ignore relevant medical information regarding Student which has resulted in a denial of FAPE to Student. Parents challenge Scituate's proposed IEP and placement as inappropriate for Student and wish for Student to be placed at the South Shore Educational Collaborative where Student's sibling currently attends school. The arguments advanced by Parents are not persuasive with respect to determination of Stay-put. Therefore, Parents' Motion for Interim Order for Placement of Student at the South Shore Educational Collaborative as Student's stay put placement is **DENIED**.

Scituate's Motion for an Order of "Stay Put" to the Therapeutic Learning Center at the Governor Winslow Elementary School, is **GRANTED**.

¹¹ I note that Parents did not challenge Scituate's rejection of the Physician's Statements. Furthermore, the Physician's Statements submitted by Parents thus far do not meet regulatory requirements.

IV. Scituate's Motion to Compel Parents' Responses to First Request for Production of Documents and First Request for Interrogatories:

Scituate argues that it served requests for production of documents and for interrogatories on October 3, 2016, and that Parents' responses were due to Scituate's on November 1, 2016, consistent with rule IV B of the *Hearing Rules for Special Education Appeals*.

To date, Parents have not responded to Scituate's discovery requests and they only filed general objections on November 16, 2016. Scituate requests that Parents be required to file their responses by the close of business on December 22, 2016.

Given the allegations raised by the Parties, the Student's apparent serious needs and his continued non-participation in an educational setting, a Hearing in this matter cannot be delayed. However, in order to properly prepare for Hearing, Scituate requires Parents' responses to the District's discovery requests. As such, Scituate's Motion to Compel discovery is **GRANTED**.

Parents shall respond to Scituate's requests for production of documents and interrogatories by the close of business on **December 22, 2016**.

V. Parents' Motion for Protective Order:

Parents argue that Scituate's Motion for a stay put order includes a "non-hearable issue", that is, Scituate is attempting to use truancy documents related to a criminal action involving truancy to influence the decision of the Hearing Officer. Specifically, Parents object to any consideration of SE-D which contains information regarding the Juvenile Court complaint for Failure to Cause School Attendance.

Parents' Hearing Request seeks an Order from the BSEA that Student attend a 45 day assessment at an out-of-district program different from the one he had been attending during the second semester of the 2015-2016 school year under a fully accepted IEP. Parents, who carry the burden of persuasion pursuant to *Shaffer v. Weast*, 126 S.Ct. 528 (2005), must show that the program and placement offered by Scituate is not appropriate to meet Student's needs. Moreover, the fact that Student has not attended school during the 2016-2017 school year is a relevant fact to be considered at Hearing. Facts involving the actions taken by Scituate to ensure that Student attends school, including during the pendency of the instant Hearing, are relevant. As such, Parents' objection to SE-D is **OVERRULED** and Parents' Motion for Protective Order is **DENIED**.

VI. Parents' Motion for Public Record of Private Settlement Agreement:

Parents argue that they are unable to evaluate the "level of care" Student should be receiving because they have nothing with which to compare the services in Student's IEP Service

Delivery Grid. Relying on the Court's Decision in *Michael Champa v. Weston Public Schools*, 473 Mass. 86 (2015), which Parent argue stands for the proposition that "private settlement agreements are public records in accordance with FERPA redactions", Parents seek to be provided with three IEPs and Service Delivery Grids of other students' whose diagnoses are similar to Student's.

Parents request can only be construed as a discovery request for redacted IEPs. As such, the request must first be directed to Scituate, which Parents' failed to do. Moreover, Parents reliance on *Ciampa* is misguided as that case is totally inapplicable to Parents' request in the instant matter.

Despite not having been formally served with the discovery request above, on December 2, 2016, Scituate objected to Parents' request to examine the three IEPs and service delivery grids of other similarly situated children, arguing that the IEPs of other children fall outside the Massachusetts public records law. Scituate argues that an IEP is not a public record, but rather a private educational record which schools are prohibited from disclosing absent consent from the parents of the other subject students, or a subpoena issued by a court. 603 CMR 23.07(4)(b). Scituate also argues that "it has at all times provided parents with any and all the requisite notices and copies of communications, as appropriate".

Scituate is correct that the IEPs of other children are private records and not subject to the Massachusetts public records law. These documents are also irrelevant to the purpose stated by Parents, that is, to compare the services and programs proposed for other students, as each IEP must be crafted to meet the individual needs of the particular child.

To the extent that Parents' request involves the release of IEPs of other children, Parents' Motion for Public Record of Private Settlement Agreement is **DENIED**.

VII. Ruling on Parents' Motion For Not Obeying a Discovery Order:

Parents argue that Scituate has not yet provided Parents with a complete educational record of Student inclusive of any and all communications or monitoring reports (inclusive of emails, memos or minutes) regarding Student. Moreover, Parents assert that the Post Pre-hearing Order reflects Scituate's agreement to provide Parents with "all information in Student's files inclusive of attendance logs, nurse's notes, summer programming information, emails, *etcetera*", which information Parents have not yet received. Parents seek a "default judgment" as against Scituate for failure to respond to their records' request.

Parents' request is **GRANTED in Part**. Scituate shall respond to Parents' request and provide the documents (pertaining to Scituate and or Marshfield) contained in Student's file by the close of business on **December 22, 2016**.

VIII. Response to Parents' Progress Report Affidavit and Issue of Candor With The Court-Dealing With The Misleading Opponent.

Parents' submission regarding the above is convoluted and confusing and also appears to seek orders that would circumvent the final outcome of Hearing. Parents also appear to raise issues such as Scituate's discriminating against Parents because of their income status and/or their Native American origins, as well as retaliation, threats, coercion and harassment.

Scituate denies all of Parents' allegations and further asserts that any delay on its part regarding performing the FBA is due to Parents' failure to make Student available by not sending him to school, and that while Scituate has consistently attempted to collaborate with Parents' providers, Parents have refused to sign any releases, thus preventing Scituate from communicating with Student's physicians and providers. Scituate further concedes that while truancy falls outside the jurisdiction of the BSEA, Student's truancy is relevant to the issues before the BSEA since Student has not attended school this year.¹²

The purpose of Parents' submission is unclear except that the submission appears to be intended as support for Parents' other Motions filed the same day. Since those Motions have been addressed earlier in this Ruling, they will not be addressed further.

In sum, Scituate and Parents shall comply with the Orders *supra* by the deadlines specified. Moreover, the Parties are advised that there will be no reconsideration of any of the Rulings contained herein and that the Hearing will proceed as scheduled below. The Parties are placed on notice that **no requests for postponements will be granted**. Taking into account the availability of the Parties as discussed during the Pre-hearing conference, this matter is scheduled to proceed as follows:

- 1) Exhibits and witness lists are due by the close of business on February 2, 2017.
- 2) A Hearing will be held on February 9, 10 and 13, 2017, at 10:00 a.m. at the Offices of DALA/BSEA, One Congress St., 11th floor, Boston, MA.

So Ordered by the Hearing Officer,

Rosa I. Figueroa
December 6, 2016

¹² I note that some of Parents' allegations may fall outside the jurisdiction of the BSEA.