**COMMONWEALTH OF MASSACHUSETTS**

Division of Administrative Law Appeals

**Bureau of Special Education Appeals**

**In Re**: Student v. **BSEA # 2102656**

 Wilmington Public Schools

**Ruling on Parents’ Motion to Quash**

Parents in the above-referenced matter filed a Hearing Request on October 5, 2020 seeking reimbursement from Wilmington Public Schools (Wilmington) for their unilateral placement of Student during the 2018-2019 and the 2019-2020 school years.

On November 13, 2020[[1]](#footnote-1), Parents in the above-referenced matter filed a Motion to Quash a Subpoena *duces tecum* to the Winchendon School at Wilmington’s request on October 26, 2020. The subpoena was issued by the BSEA on October 26, 2020.

Parents then amended their Hearing Request on October 28, 2020, withdrawing their claim for reimbursement for the period following August 2019 involving Student’s unilateral placement at the Winchendon School.

According to Parents, Student did not attend the Winchendon School between October 2018 and August 2019, the relevant period covered in Parents’ Hearing Request, since Student did not begin attending the Winchendon School until September of 2019. Between October and August 2019, Student was unilaterally placed at The Equinox Residential Treatment Center in Hendersonville, North Carolina (Equinox) for which placement Parents seek reimbursement.

Parents assert that Student attends the Winchendon School as a privately funded enrollee and having amended their Hearing Request to exclude public funding for this placement for the period from September 2019 forward, Student’s placement at the Winchendon School is not relevant to the pending litigation. Parents’ Amendment of the Hearing Request does not state the reasons for withdrawing their claim for reimbursement of the Winchendon School or whether they intend on filing a separate action for reimbursement at a later time.

Parents state that counsel for the Winchendon School contacted Wilmington on November 12, 2020, requesting that Wilmington withdraw the subpoena. Asserting that Student’s records at the Winchendon School are not relevant to the controversy before the BSEA and that Student has a “federally protected privacy interest in such records”, Parents seek to quash the subpoena *duces tecum* issued to Winchendon School. According to Parents, Wilmington’s continued pursuit of said records is designed to harass Student and Parents.

On November 16, 2020, Wilmington filed an Opposition to Parents’ Motion to Quash the Subpoena *duces tecum* to the Winchendon School. Wilmington noted that Rule VII(B) of the *Hearing Rules for Special Education Appeals* permit issuance of a subpoena at the request of a party prior to a hearing and specifically provides that “a person receiving a subpoena may request that a Hearing Officer vacate or modify the subpoena.” See also, M.G.L. c.30A §12[[2]](#footnote-2). Since Parents are not the individual on whom the subpoena was served Wilmington argues that Parents lack standing to request that the subpoena be quashed and therefore, their Motion to Quash should be denied.

Wilmington further argues that the documents and information sought from the Winchendon School are relevant to the issues at hearing because the documents include information about Student’s out-of-district school (Equinox), including information regarding Student’s performance during the admission process which followed the period for which Parents seek reimbursement, and information regarding Student’s performance since his admission in September 2019. According to Wilmington, documents and information regarding Student’s performance in the school selected by Parents are relevant to the appropriateness of the school preceding it in that “they would provide important information regarding the student’s admission to Winchendon, any evaluations undertaken by Winchendon, then-present levels of student’s performance during various times at Winchendon, the student’s progress across time at Winchendon, and what services have been necessary for the student during the time at Winchendon” thereby offering valuable, relevant information regarding the Equinox placement (for which Parents seek reimbursement) and whether it was appropriate for Student. Thus, Wilmington requests that Parents’ Motion to Quash be denied.

Rule VII C of the *Hearing Rules for Special Education Appeals* specifically provides that

A person receiving a subpoena may request that a Hearing Officer vacate or modify the subpoena. A Hearing Officer may so do upon a finding that the testimony or documents sought are not relevant to any matter in question or that the time of place specified for compliance or the breadth of the material sought imposes an undue burden on the person subpoenaed.

The record shows that the subpoena Wilmington requested to be issued on October 26, 2020 was issued by the BSEA to the Keeper of Records at the Winchendon School, not Parents.

I find that Wilmington is correct that pursuant to Rule VII C of the *Hearing Rules for Special Education Appeals*, Parents lack standing to request that the subpoena to the Winchendon School be quashed and even if the appropriate party were to request that the subpoena be quashed it is unlikely that said request would be granted in its entirety.

As such, Parents’ Motion to Quash the subpoena *duces tecum* issued to the Winchendon School on October 26, 2020 is hereby **DENIED**.

So Ordered by the Hearing Officer,

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Rosa I. Figueroa

Dated: November 23, 2020

1. Via email. [↑](#footnote-ref-1)
2. “Any witness summoned may petition the agency to vacate or modify a subpoena issued in its name”. [↑](#footnote-ref-2)