**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Springfield Public Schools BSEA # 2208440**

**RULING ON SPRINGFIELD PUBLIC SCHOOLS’ MOTION TO QUASH**

This matter comes before the Hearing Officer on the November 15, 2022 *Springfield Public Schools’ Motion to Quash* (*Motion*) seeking to quash the requests for subpoenas filed by the Advocate for Parent on November 14, 2022.. Specifically, the District asserts that the subpoena requests are untimely and seek subpoenas for several school staff who have no relevant information to offer in this matter.[[1]](#footnote-1) Parent did not file a written response to the District’s *Motion,* but she requested a hearing thereon.

A motion hearing was held via a virtual platform on November 21, 2022 and was recorded by a court stenographer.[[2]](#footnote-2) A Spanish interpreter was provided for Parent.

For the reasons set forth below, the District’s *Motion* is ALLOWED, in part, and DENIED, in part.

**PROCEDURAL HISTORY AND RELEVANT FACTS:**

The factual background and procedural history of this matter have been described in detail in my previous published Rulings. I need not repeat them here, except to note that the issues for Hearing have been outlined as follows:

1. Whether the District conducted an IEP meeting without Parent in attendance on 4/11/2022?
	1. If the answer to (1) is yes, did the District deny Parent meaningful participation in the IEP process?
	2. If the answer to (1)(a) is yes, what is the appropriate remedy?
2. Whether the District failed to implement Student’s IEP dated IEP dated the IEP dated 11/9/21 to 4/12/22 and 8/26/22 to 6/23/23?
	1. If the answer to (2) is yes, did the District deny Student a FAPE?
	2. If the answer to (2)(a) is yes, what is the appropriate remedy?
3. Whether Springfield failed to conduct a Title IX investigation relative to an incident which took place on or about September 2021?
	1. If the answer to (3) is yes, did the District deny Student a FAPE?
	2. If the answer to (3)(a) is yes, what is the appropriate remedy?
4. Whether Springfield ignored the recommendations of the Center School when drafting the IEP dated 8/26/22 to 6/23/23?
	1. If the answer to (4) is yes, and if so, did the District deny Parent meaningful participation in the IEP process?
	2. If the answer to (4)(a) is yes, what is the appropriate remedy?
5. Whether Springfield made a unilateral placement during the IEP meetings on 6/26/22, 8/17/2022, 9/29/22, 10/20/22, and 10/31/22?
	1. If the answer to (5) is yes, and if so, did the District deny Parent meaningful participation in the IEP process?
	2. If the answer to (5)(a) is yes, what is the appropriate remedy?
6. Whether the IEP proposed for the period from 11/9/21 to 4/12/22 and/or the IEP proposed for the period from 8/26/22 to 6/23/23 were/are reasonably calculated to offer Student a FAPE in the LRE?
7. If the answer to (6) is no, what is the appropriate remedy?

The Hearing in this matter is scheduled to begin on November 22, 2022.

**LEGAL STANDARDS:**

1. *Timeliness of Subpoena Requests*

BSEA Hearing Rule VII (B) states that any requests for a subpoena "must be received by the Hearing Officer at least ten (10) calendar days prior to the hearing, [and] shall specify the name and address of the person to be subpoenaed.”

1. *The BSEA’s Authority to Issue and Quash Subpoenas*

Both the BSEA *Hearing Rules for Special Education Appeals* and the Formal Standard Adjudicatory Rules of Practice and Procedure which govern due process hearings at the BSEA allow Hearing Officers to issue, vacate or modify subpoenas.[[3]](#footnote-3) Under BSEA Hearing Rule VII B:

“Upon the written request of a party, the BSEA shall issue a subpoena to require a person to appear and testify and, if requested, to produce documents at the hearing. A party may also request that the subpoena duces tecum direct the documents subpoenaed from a non-party be delivered to the office of the party requesting the documents prior to the hearing date.”

According to BSEA Hearing Rule VII C:

“A person receiving a subpoena may request that a Hearing Officer vacate or modify the subpoena. A Hearing Officer may do so upon a finding that the testimony or documents sought are not relevant to any matter in question or that the time or place specified for compliance or the breadth of the material sought imposes an undue burden on the person subpoenaed.”[[4]](#footnote-4)

Pursuant to the Federal Rules of Civil Procedure, in a motion to quash,

“the movant has the burden of demonstrating that the material sought by the subpoena is privileged or protected, or that production would result in an undue burden.  The subpoenaing party has the burden of establishing that the requested information is relevant to its claims or defenses.  The scope of discoverable information is governed by Rule 26, which allows discovery of items reasonably calculated to lead to the discovery of admissible evidence.”[[5]](#footnote-5)

Whether a subpoena subjects a witness to undue burden

“usually raises a question of the reasonableness of the subpoena, requiring a court to balance the interests served by demanding compliance with the subpoena against the interests furthered by quashing it. This process of weighing a subpoena's benefits and burdens calls upon the trial court to consider whether the information is necessary and whether it is available from any other source, which is obviously a highly case specific inquiry and entails an exercise of judicial discretion.”[[6]](#footnote-6)

**APPLICATION OF LEGAL STANDARDS:**

The District argues that Parent’s subpoena requests are untimely and must be denied.[[7]](#footnote-7) While it is true that Parent’s request is untimely, I am disinclined to allow the *Motion* on such grounds alone as it is my responsibility to receive and consider all relevant and reliable evidence in this matter.[[8]](#footnote-8)

Whether the witnesses at issue should be compelled to attend and testify at the hearing in this case depends on whether their testimony is relevant to the issues for hearing, namely, whether, on multiple occasions, Parent was denied meaningful participation in the IEP process, whether Student’s IEP was properly implemented, Springfield failed to conduct a Title IX investigation relative to an incident which took place on or about September 2021 resulting in a denial of a free and appropriate public education (FAPE) to Student, and whether the IEPs proposed by Springfield were reasonably calculated to offer Student a FAPE in the least restrictive environment (LRE). After reviewing Springfield’s *Motion* and Parent’s responses in light of these issues and the above-quoted legal standards, I conclude the following:

1. Springfield’s Motion to Quash Subpoena of Superintendent Daniel Warwick is ALLOWED.

According to Springfield, as the Superintendent,

“Mr. Warwick is not and has never been a member of [Student’s] Team, has never attended any Team meetings, did not participate in the drafting of IEPs,

is not personally responsible for implementing any of the services or accommodations

and is not responsible for making any educational decisions for [Student]. Likewise, Mr.

Warwick was not involved in any Title IX investigations and therefore, has not personal

knowledge of any of the issues for hearing. Simply put, Superintendent Warwick has no

personal knowledge of [Student].”

Parent argues that Superintendent Warwick oversees the entire District and is responsible for each student, including Student.

Upon consideration of the parties’ arguments, I find that the Superintendent’s connection to the issues before me is completely attenuated. I am not persuaded that Superintendent Warwick’s testimony would be relevant to any of the issues in this case, or that the information contained in any such testimony could not be provided by other witnesses who have had direct contact with Student. For these reasons, Springfield’s *Motion* as to Superintendent Warwick is ALLOWED.

1. Springfield’s Motion to Quash Subpoena of Shannon Collins, Chief Schools Officer, is ALLOWED.

According to Springfield,

“Ms. Collins is the Chief Schools Officer at the Springfield Public Schools. Ms. Collins role is a high-level Administrator who oversees building principals. Like Superintendent Warwick, Ms. Collins has no direct role relative to [Student] or any of the issues for hearing. Ms. Collins has no knowledge of any facts at issue and therefore cannot offer any relevant testimony in this case.”

Parent argues that Ms. Collins attended some meetings regarding Student and was referenced in school exhibits offered for admission.

Upon consideration of the parties’ arguments, I am not persuaded that Chief Schools Officer Collins’s testimony would be relevant to any of the issues in this case, or that the information contained in any such testimony could not be provided by other witnesses who have had direct contact with Student. For these reasons, Springfield’s *Motion* as to Ms. Collins is ALLOWED.

1. Springfield’s Motion to Quash Subpoena of Kathleen O'Sullivan, Senior Administrator of Human Resources and Educator Development, is ALLOWED.

According to Springfield,

“Ms. O'Sullivan is the Senior Administrator of Human Resources and Educator Development for the Springfield Public Schools. … Ms. O'Sullivan has no direct knowledge of [Student]. While [Advocate], names her as the Title IX Coordinator, she was not responsible for conducting the Title IX investigation of [Student]. This investigation was conducted by Principal Harris. Ms. O'Sullivan played no role in this. Therefore, Ms. O'Sullivan has no relevant testimony to provide in this case.”

Parent argues that Ms. O’Sullivan was involved in the Title IX investigation relative to Student. She also appears in email communications offered by the District into evidence.

Upon consideration of the parties’ arguments,  I am not persuaded that Ms. O’Sullivan’s testimony would be relevant to any of the issues in this case, or that the information contained in any such testimony could not be provided by other witnesses who have had direct contact with Student. For these reasons, Springfield’s *Motion* as to Ms. O’Sullivan is ALLOWED. However, Parent will be allowed to motion the Hearing officer to reconsider this ruling following testimony relative to the Title IX investigation at issue.

1. Springfield’s Motion to Quash Subpoena of Jill Bonavita, Evaluation Team Leader at Dryden Elementary School, is ALLOWED.

According to Springfield,

“Ms. Bonavita was [Student’s] Team Chair when he first came to Springfield and attended the Dryden Elementary School. At the time that Ms. Bonavita was a part of [Student’s] Team he was in the 4th grade (now in grade 6). Therefore, the time period that Ms. Bonavita was involved with [Student] pre-dates the time period covered in this hearing. For this reason, Ms. Bonavita would not have any relevant testimony to provide on any of this issues for hearing.”

Parent argues that Ms. Bonavita was active in the development of the 2020-2021 IEP as well as in Student’s transfer from Dryden Elementary School to Harris Elementary School.

Because Ms. Bonavita has had no involvement with Student since the conclusion of the 2020-2021 school year, and the issues in this matter do not extend to said school year, I find that she can offer no relevant, current information about Student. For these reasons, Springfield’s *Motion* as to Ms. Bonavita is ALLOWED.

1. Springfield’s Motion to Quash Subpoena of Michael Calvcnese, Principal of Kiley Middle School, is /DENIED.

According to Springfield,

“Mr. Calvanese is the Principal of the Kiley Middle School that [Student] began attending in September 2022. His only direct involvement has to do with discipline which is not an issue in this case. Therefore, Mr. Calvanese does not have relevant testimony to add to this case.”

Parent argues that Ms. Calvanese is Student’s current Principal and has attended several meetings with Parent, including a re-engagement meeting.

As Student's current Principal, Mr. Calvanese, could offer relevant, current information about Student. For these reasons, Springfield’s *Motion* as to Mr. Calvanese is DENIED.

**ORDER:**

*Springfield Public Schools’ Motion to Quash* is ALLOWED, in part, and DENIED, in part, as delineated above.

So ordered,

By the Hearing Officer,

s/ *Alina Kantor Nir*
Alina Kantor Nir

Date: November 21, 2022

1. Parent withdrew her request to subpoena Attorney Melinda Phelps. As such, the District’s *Motion to Quash* relative to Attorney Phelps will not be addressed in this Ruling. [↑](#footnote-ref-1)
2. Parent requested that the Hearing be open to the public, and her request was ALLOWED. See 34 CFR Section 300.512(c)(2). The parties attempted to hold the motion hearing on November 17, 2022, but, due to issues with the interpreter, it was rescheduled to November 21, 2022. [↑](#footnote-ref-2)
3. See 801 CMR 1.01(10)(g) and BSEA Hearing Rules VII B and C. [↑](#footnote-ref-3)
4. See also Fed. R. Civ. P. 45 (d)(3), which states

“(3) *Quashing or Modifying a Subpoena*.

(A) *When Required*. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted*. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative*. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.” [↑](#footnote-ref-4)
5. *Jee Fam. Holdings, LLC v. San Jorge Children's Healthcare, Inc.,* 297 F.R.D. 19, 20 (D.P.R. 2014) (internal citations and quotations omitted). [↑](#footnote-ref-5)
6. *Vesper Mar. Ltd. v. Lyman Morse Boatbuilding, Inc.,* No. 2:19-CV-00056-NT, 2020 WL 877808, at \*1 (D. Me. Feb. 21, 2020) (internal citations and quotations omitted). [↑](#footnote-ref-6)
7. See BSEA Hearing Rule VII(B). [↑](#footnote-ref-7)
8. See 603 CMR 28.08(5)(c). [↑](#footnote-ref-8)