**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Dracut Public Schools BSEA # 2312210**

**RULING ON THE DRACUT PUBLIC SCHOOLS' MOTION TO QUASH SUBPOENA**

This matter comes before the Hearing Officer on the September 18, 2022 *Dracut Public Schools’ Motion to Quash Subpoena* (*Motion*) seeking to quash the request for subpoena filed by Parent for Mary Bowie, who is “… the District’s Technology Integration Specialist,” asserting that she “has no information to share on this matter relevant to the issues at hearing. On September 19, 2023, Parent responded, opposing the *Motion*.

Because neither testimony nor oral argument would advance the Hearing Officer’s understanding of the issues involved, this Ruling is issued without a hearing, pursuant to Bureau of Special Education Appeals Hearing Rule VII(D).

For the reasons set forth below, the District’s *Motion* is hereby **DENIED.**

**PROCEDURAL HISTORY AND RELEVANT FACTS:**

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

a. Whether, in violation of Section 504 of the Rehabilitation Act of 1973, the District discriminated and retaliated against Parent for requesting a 504 Plan and advocating for Student:

i. By deleting "accounts and private emails in the Class Dojo App after [Parent] requested them in Discovery and before a ruling was [issued] on the matter" and failing to abide by Parent's ADA accommodations of "need[ing] to have printed copies [ of documents] in order to be sure [she] didn't miss impot1ant information"; and,

ii. By "[t]ransfer[ing] the [investigation of Student's alleged sexual assault] from Title IX investigator Joanna Garneau to Vice Principal Wojcik knowing the parent had an open Bullying rep01i against her", "intimidate[ing] [Student]," and "forg[ing] documents" relative to this investigation.

b. Whether the District failed to provide Student a FAPE due to the limitations of the Aspen system by proposing a 504 Plan with incorrect names and incomplete list of attendees.

c. Whether the District was negligent in using the Aspen system as such use "caus[es] a violation of 504 amongst many other violations."

The Hearing in this matter is scheduled to continue on September 21, 2023.

**LEGAL STANDARDS:**

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

Both the BSEA Hearing Rules 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.[[1]](#footnote-1) Pursuant to 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.”[[2]](#footnote-2)

In a motion to quash under the Federal Rules,

“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.”[[3]](#footnote-3)

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.”[[4]](#footnote-4)

**APPLICATION OF LEGAL STANDARDS:**

Whether the witness at issue should be compelled to attend and testify at the hearing in this case depends on whether her testimony is relevant to the issues for hearing. After reviewing Dracut’s *Motion*  in the context of said issues and the above-quoted legal standards, I conclude that the *Motion to Quash* the subpoena of Ms. Bowie must be DENIED.

The District argues that

“Ms. Bowie had no direct involvement in the issues remaining for hearing; her connection to the issues before the Hearing Officer is attenuated. Ms. Bowie is a District employee in the Technology Integration department for the District. Regarding the issues remaining before the Hearing Officer, Ms. Bowie played no role in the Section 504 process for the Student, no role in the maintenance of teachers’ personal Class Dojo and email accounts, no role in the investigation of the sexual assault allegations from March 2023, and no specific role regarding this Student relating to the Aspen system…. Appearing at a Hearing in a matter of which Ms. Bowie has no personal information would be an undue burden.”

In response, Parent asserted that

“Two (2) of the issues on for hearings are whether the District failed to provide Student a FAPE due to the limitations of the Aspen System by proposing a 504 Plan with incorrect names and incomplete list of attendees and whether the District was negligent in using the Aspen system as such use ‘caus[es] a violation of 504 amongst many other violations.[’] I feel that Ms Bowie's expertise in Aspen is necessary to correctly answer questions regarding the program as the witnesses in attendance during last hearings were not qualified to answer.

Although Ms. Bowie has no personal information regarding Student, she has specific knowledge regarding ASPEN, which, as Parent asserts, is not information that can be provided through the testimony of other witnesses already appearing at Hearing. Because I find that Ms. Bowie’s testimony may be relevant to the issues at Hearing, Dracut’s *Motion* is DENIED.

**ORDER:**

The District’s *Motion* is hereby DENIED.

So ordered,

By the Hearing Officer,

s/ *Alina Kantor Nir*
Alina Kantor Nir

Date: September 19, 2023

1. See 801 CMR 1.01(10)(g) and BSEA Hearing Rules VII B and C. [↑](#footnote-ref-1)
2. See also Fed. R. Civ. P. 45 (d)(3 [↑](#footnote-ref-2)
3. *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-3)
4. *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-4)