**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 FOR SUPERINTENDENT STEVEN STONE**

This matter comes before the Hearing Officer on the August 2, 2022 *Dracut Public Schools’ Motion to Quash Subpoena for Superintendent Steven Stone* (*Motion*) seeking to quash the request for subpoena filed by Parent on August 1, 2023. Specifically, the District asserts that

“Superintendent Stone had no direct involvement in the development of the Student's 504 Plan or, to the extent the Parent is able to prove at hearing she consented to the 504 Plan, the implementation of the Student's 504 Plan. Superintendent Stone also does not have any direct involvement in the on-going investigation into the March 2023 sexual assault allegations. Such a subpoena can only be viewed to unnecessarily burden and harass the District.”

On August 2, 2023, Parent filed a response to the District’s *Motion,* asserting “the Superintendent’s relevance to each of the issues at Hearing.” Specifically, with regards to issue (1), Parent asserts that

“Kimberly Lawrence is Superintendent Steven Stone's right hand and second in the command chain. Having the Director of Student Services is not something normally done or needed when other parents have 504 plan meetings; however because the situation was so severe the parent wrote to the Superintendent's office with the contact being Kimberly Lawrence who attended and seemingly chaired the meetings…The 504 plan meeting on 3/14/2023which was recorded had Kimberly Lawrence from Stone’s office essentially running it as she took it over from Principal Drohan. Since Superintendent Steven Stone’s office overtook handling the 504 plan it’s extremely likely for Stone to have information regarding this issue for hearing.”

With regard to issue (2), Parent contends that

“Kimberly Lawrence ran the 504 plan meeting and seemingly took over handling the 504 plan …. Since Kimberly Lawrence was participating in handling the 504 plan the parent reached out to her …. Lawrence never responded to the mother until a day AFTER the meeting was to take place …. Since Lawrence works directly for Superintendent Steven Stone’s office.[sic] It is reasonable to believe he has information pertaining to the issues at hearings. It is also fair to say that Stone’s office personally was involved with failing to meet with the parent to amend the students 504 plan.”

With regard to issue (3), Parent states that

“Kimberly Lawrence from Superintendent Steven Stone’s office answers the parents questions on what is required to receive a 504 plan. She states that only a diagnosis is needed. She also is CC’d [sic] in all correspondence including the original 504 plan issued on 3/20/2023 which had errors …. Lawrence, who is from Stone’s office, witnessed ALL of this as she was CC’d [sic] in the numerous lengthy emails where the parent points out this is not required and specifically points out that Lawrence stated that only a diagnosis is needed…. Stone not only has information regarding the retaliation but his office participated in it.”

With regard to issue (5), Parent asserts that she

“is clearly heard stating that no plan was put in place after [] the student’s sexual assault and numerous emails were ingored. [sic] …. The very same day of the 504 plan on 4/4/2023 in which Lawrence is heard saying only the Superintendent can answer and that she would remind Stone of my request a letter of denial was sent from Stone’s office. Since as Lawrence states only the Superintendent can make that decision it's clear this letter came directly from him and is written with his name as well as Lawrence’s in the heading. This leads to believe that Stone was indeed aware of all that was going on as he made the decision to not allow the student and her sibling to change schools. He would have needed to know why the request was made so clearly he did have all the information, was aware of all situations, and even made rulings regarding them. It is more than reasonable to believe he has relevant information to these hearings and him being issued a Subpoena to be a witness is highly appropriate. When it is stated the “District” retaliated the parent means this to include Superintendent Steven Stone as the parent was personally retaliated on by him in May 2022 when she reported him to the school committee and also the PRS department for bullying. He retaliated on her by slapping a NO TRESPASS order on her.”

With regard to issue (6), Parent contends that the

“District retaliated by sending a letter from Stone’s Office via Joanna Garenau. Garneau was brought into this by Kimberly Lawrence after Lawrence passed the initial sexual assault that was reported in an official bullying complaint. Its [sic] fair to assume Stone was well aware of this to as Garneu claims the District was now opening up a civil rights claim. It is extremely believable That Superintendent Steven Stone had direct involvement in the development of the Student’s 504 plan as his 2nd in command has been present during every discussion regarding it and states numerous times that she made him aware of it. He also clearly has direct involvement to the sexual assault allegations as his office was handling it. To say that he doesn't have any involvement is a straight mistruth. This is not an unnecessary burden or harassment by the parent as is claimed by the District.”

Neither party has requested a hearing on 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 **ALLOWED.**

**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 issues for Hearing have been outlined as follows:

(1) Whether Dracut's proposed 504 Plan is appropriate;

(2) Whether the District failed to meet with Parent to amend Student's 504 Plan in

violation of the procedural requirements of Section 504;

(3) Whether the District retaliated against Parent by 'taking back' the 504 Plan and

insisting that Parent provide additional documentation of Student's diagnosis;

(4) Whether the District failed to implement accepted portions of Student's 504 Plan;

(5) Whether Dracut failed to investigate the March 2023 sexual assault incident, and,

if so, whether such failure denied Student a FAPE.

(6) Whether the District retaliated against the Parent in response to her filing the June 1, 2023 Request for Hearing, via letter dated June 30, 2023 seeking to extend the timeline for investigation of the March 2023 sexual assault incident.

The Hearing in this matter is scheduled to begin on August 16, 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 his testimony is relevant to the issues for hearing. After reviewing Dracut’s *Motion* and Parent’s responses in the context of the above-quoted legal standards and the issues for hearing, I conclude that the motion to quash the subpoena of Superintendent Steven Stone is ALLOWED.

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 the Superintendent’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 actually had direct contact with Student or Parent. Moreover, appearing at Hearing in a matter of which Superintendent has no personal information would be an undue burden on the Superintendent. For these reasons, Dracut’s *Motion* is ALLOWED.

**ORDER:**

The District’s *Motion* is ALLOWED.

So ordered,

By the Hearing Officer,

s/ *Alina Kantor Nir*
Alina Kantor Nir

Date: August 4, 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)