**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Pittsfield Public Schools** **BSEA #  2406614**

**RULING ON THE PITTSFIELD PUBLIC SCHOOLS' MOTION FOR PROTECTIVE ORDER RELATIVE TO PARENT’S SUBPOENA REQUEST**

This matter comes before the Hearing Officer on *Pittsfield Public Schools’ Motion for Protective Order Relative to Parent’s Subpoena Request* (*Motion*), filed on March 29, 2024.  Said *Motion* seeks to quash Parent’s March 28, 2024 subpoena request, which subpoena was issued by the Bureau of Special Education Appeals (BSEA) on March 29, 2024 calling for Superintendent Joseph Curtis’s testimony at the Hearing scheduled to begin on April 4. 2024. The *Motion* asserts that the subpoena issued was untimely; that it is burdensome; and that

“Superintendent Curtis is not and has never been a member of [Student’s] IEP Team and has never attended an IEP meeting for [Student]. He is not a direct service provider and has no direct knowledge of the issue for hearing in this matter which is whether the District's proposal for an Extended Evaluation is required in order for [Student] to receive a [free appropriate public education (FAPE)].”

On March 29, 2024, Parent filed her response to the *Motion*[[1]](#footnote-1), asserting, in part:

“I believe this effort to quash the subpoena is an effort to hide the truth of the sequence of events because Mr. Curtis did not follow protocol and regulations for this meeting, which I have been saying at every single [individualized education program (IEP)] meeting since then. Now why would PPS need to silence or hide the statement of a top admin involved? This is a cover up to protect Mr. Curtis.”

Parent further states that her meeting with the Superintendent in June 2023

“proves that [Pittsfield Public Schools] admin were well aware of our needs and requests long before this hearing process. It's absolutely relevant…. Mr. Curtis has absolutely been involved in [Student’s] case. We assert our right to have ALL the facts of this case to be heard. [Pittsfield Public Schools] must take accountability for what its ‘top leader’ in the district says and does.”

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 Pittsfield Public Schools’ *Motion* is hereby **ALLOWED.**

**PROCEDURAL HISTORY AND RELEVANT FACTS:**

Student is a 4th grade, 9 year old student, currently attending Morningside Community School in Pittsfield, Massachusetts. He is eligible for special education and related services pursuant to a Health Impairment disability category and his IEP for the period October 23, 2023 to October 22, 2024 calls for a full inclusion placement.

On June 11, 2024, Pittsfield Public Schools (Pittsfield or the District) filed a due process complaint with the BSEA seeking substitute consent for an extended evaluation of Student at the Crosby Educational Academy, asserting that such evaluation was necessary as Student was not making meaningful, effective progress within his current inclusion placement. Hence, the only issue to be decided in this matter is whether Parent’s refusal to consent to the extended evaluation at Crosby Academy or a comparable therapeutic milieu, as proposed by the Pittsfield Public Schools, will result in the denial of a free appropriate public education (FAPE) to Student, in which case, substitute consent is appropriate.

The Hearing in this matter is scheduled to begin on April 4, 2024.

**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.[[2]](#footnote-2) 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.”[[3]](#footnote-3)

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.”[[4]](#footnote-4)

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.”[[5]](#footnote-5)

**APPLICATION OF LEGAL STANDARDS:**

Whether Superintendent Curtis 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 Pittsfield’s *Motion* and Parent’s response in the context of the single issue identified by the moving party in this matter *supra* and the above-quoted legal standards, I conclude that the *Motion to Quash* the subpoena of Superintendent Curtis must be ALLOWED.

I note at the outset that Parent’s subpoena was, indeed, untimely, having not been “received by the Hearing Officer at least ten (10*)* calendar days prior to the hearing” in accordance with Rule VII (B) of the BSEA Hearing Rules. However, such grounds alone would not support quashing of the subpoena if I could find that the information Superintendent Curtis could offer was necessary and unavailable from any other source.[[6]](#footnote-6)  Nevertheless, Parent’s arguments in response to the *Motion* do not support such a finding. Specifically, Parent seeks Superintendent Curtis’s testimony to demonstrate that he “did not follow protocol and regulations for [their] meeting” and that Pittsfield was “well aware of our needs and requests long before this hearing process”. Such testimony would bear no weight on the very explicit and distinct issue before me. Specifically, whether Superintendent Curtis agreed to fund an outside evaluation at the June 2023 meeting or whether he and other District administrative staff were aware of Student’s escalating needs in June 2023 is not relevant to the issue of whether Parent’s refusal to consent to the proposed extended evaluation will result in the denial of a FAPE to Student. Where the Superintendent’s actions or inactions are irrelevant to the issue at hand, to wit: whether an order for substitute consent is appropriate, the upcoming Hearing is simply not the right avenue through which Parent may compel Pittsfield “to take accountability for what its ‘top leader’ in the district says and does”.

**ORDER:**

The District’s *Motion* is hereby ALLOWED.

So ordered,

By the Hearing Officer,

/s/ *Alina Kantor Nir*
Alina Kantor Nir

Date:  April 1, 2024

1. In support of her response, Parent submitted an email chain with Superintendent Curtis from June 2023 referencing a meeting with the Superintendent and Parent’s request for an outside evaluation. In the email chain, Parent also requests copies of the Superintendent’s notes from said meeting which, according to Superintendent Curtis, he did “not save.” [↑](#footnote-ref-1)
2. See 801 CMR 1.01(10)(g) and BSEA Hearing Rules VII B and C. [↑](#footnote-ref-2)
3. See also Fed. R. Civ. P. 45 (d)(3 [↑](#footnote-ref-3)
4. *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-4)
5. *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-5)
6. See *id.* [↑](#footnote-ref-6)