**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Plymouth Public Schools BSEA # 2407535**

**RULING ON THE PLYMOUTH PUBLIC SCHOOLS' MOTION TO QUASH SUBPOENA FOR**

**SUPERINTENDENT CHRISTOPHER CAMPBELL**

This matter comes before the Hearing Officer on *Plymouth Public Schools’ Motion to Quash Subpoena for Superintendent Christopher Campbell* (*Motion*), filed on March 25, 2024. Said *Motion* seeks to quash Parents’ February 7, 2024 subpoena request, which subpoena was issued by the Bureau of Special Education Appeals (BSEA) on February 8, 2024. The Motion asserts that Superintendent Christopher Campbell,

“has extensive responsibilities in the management of a large district. Requiring the Superintendent to participate in and attend a hearing over the course of several days in a matter in which he has little relevant information would pose an undue burden on the District and Dr. Campbell. Dr. Campbell has met with the Parents on two occasions

regarding the Student; on each occasion at least one other employee of the Plymouth Public Schools who will be attending the hearing in this matter were present, namely Principal [] and Interim Director of Special Education []. Furthermore, Superintendent Campbell had no direct involvement in the development or implementation of the Student's Individualized Education Program. Such a subpoena can only be viewed to unnecessarily burden the District.”

On March 27, 2024, Parents filed *Parents’ Objection To The District’s Motion To Quash Subpoena For Superintendent Christopher Campbell* (*Objection*) asserting that

“Prior to the filing of this hearing request, parents had previously met with the Superintendent to discuss their safety concerns with their daughter’s educational programming. He said he would gather more information and asked to meet with parents again after he looked into the concerns. Despite parents following up and asking twice to convene that third meeting, the Superintendent did not respond. The Superintendent is ultimately responsible for all decisions made in the District, and parents would like to question him about the district’s safety procedures, as to what were in place before and after the incident that generated this hearing request.”

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:**

Student is an eight-year-old girl in the second grade who until January 2024 was enrolled in Plymouth. She has diagnoses of Autism Spectrum Disorder, ADHD, delayed social skills, and Generalized Anxiety Disorder. Student struggles with anxiety and school refusal. She is eligible for and has been receiving special education and related services pursuant to an IEP since kindergarten.

Since June 2023, and prior to her unliteral placement at the Inly School in Scituate, Massachusetts, Student had refused to attend school. On January 30, 2024, Parents filed a Hearing Request, asserting, in part, that Student was denied a FAPE by Plymouth and seeking, in part, a placement in “a private, holistic, student-centered school with small class sizes and an emphasis on social-emotional well-being”; reimbursement of tuition for Student’s unilateral placement at the Inly School; and compensatory services for the District’s “failure to provide specialized instruction in reading comprehension and written expression since February 2023 and missed special education services from September to December 2023.”

The Hearing in this matter is scheduled to begin on April 10, 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.[[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 Superintendent Campbell 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 Plymouth’s *Motion* in the context of the issues 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 Campbell must be ALLOWED. Superintendent Campbell is not a member of the IEP Team. Although he may be, as Parents assert, “ultimately responsible for all decisions made in the District,” the issues in this hearing are narrow, and there are other school witnesses who can testify “about the district’s safety procedures, as to what were in place before and after the incident that generated this hearing request.”

**ORDER:**

The District’s *Motion* is hereby ALLOWED.

So ordered,

By the Hearing Officer,

/s/ *Alina Kantor Nir*
Alina Kantor Nir

Date: March 28, 2024

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)