**COMMONWEALTH OF MASSACHUSETTS**

*Division of Administrative Law Appeals*

**Bureau of Special Education Appeals**

**In Re**: Student v. **BSEA #** 2501351

 Rockland Public Schools

**Ruling on Parent’s Motion to Quash Rockland Public Schools’ Subpoena Duces Tecum**

The above-referenced matter involves a Parent Hearing Request filed on July 29, 2024. Consistent with an Order issued on November 19, 2024, granting the Parties’ second request for postponement of the Hearing, this matter is scheduled to proceed on March 3 and 4, 2025.

On September 18, 2024, Rockland Public Schools (Rockland or District) received signed parental consent to communicate and exchange information with some of Student’s private providers; to wit, Bay State Physical Therapy (Angelica Castaneda); South Shore Therapies (Alexis Kimmelman); Life Dimensions (Anna Maria Lasoski PsyD); and Aspire Health Alliance (Aiisha Armand, Therapeutic Mentor).

Thereafter, on October 14, 2024, Rockland requested that the Bureau of Special Education Appeals (BSEA) issue subpoenas *duces tecum* to several entities, set forth as including: “Arbour Counseling Services, Jillian Manning; Bay State Physical Therapy; Life Dimensions Neuropsychological Services (Life Dimensions), Anna Maria Lasoski PsyD; Aspire Health Alliance; South Shore Health; South Shore Medical, Dr. Matthew Hjort; South Shore Therapies, Alexis Kimmelman; Dana Behavioral Health”. These subpoenas were issued by the BSEA on October 15, 2024.

On October 31, 2024, Parent filed a *Motion to Quash and Vacate Rockland’s Subpoena Duces Tecum* to Dana Behavioral Health (Dana), Arbour Counseling Services, South Shore Health, South Shore Medical Center- Pediatrics Dr. Matthew Hjort: Baystate Physical Therapy; Life Dimensions Neuropsychological Services, Anna Maria Lasoski; Aspire Heath Alliance and South Shore Therapies, Alexis Kimmelman, and on November 1, 2024, Dana filed *Non-Party Dana Behavioral Health’s Motion to Quash Rockland Public Schools Subpoena Duces Tecum*. Also on November 1, 2025, Rockland filed a notice of intent to respond to Parent’s *Motion to Quash*, and on November 7, 2024, filed an *Opposition to Parent’s and Non-Party Dana Behavioral Health’s Motion to Quash Subpoena Duces Tecum*.

Non-Party Dana replied to Rockland’s *Opposition to Motion to Quash* on November 13, 2024, and on November 14, 2024, Rockland replied to Dana’s submission.

The Parties were unable to resolve their dispute independently. This Ruling is issued in consideration of the Parties’ submissions, Parent’s Hearing Request, M.G.L. c. 30A §12, Rules V, VI and VII of the BSEA Hearing Rules for Special Education Appeals (BSEA Rules), the Administrative Rules of Practice and Procedure (801 CMR 1.00 et seq.) and other related Massachusetts statutes and regulations discussed *infra.*

**Position of the Parties**:

1. Parent:

Parent seeks to quash the subpoenas duces tecum served on Student’s doctors and therapists specifically challenging items 1[[1]](#footnote-1), 3[[2]](#footnote-2) and 5[[3]](#footnote-3) in Schedule A of the subpoenas ?served on: Dana , Arbour Counseling Services, South Shore Health, South Shore Medical Center- Pediatrics Dr. Matthew Matther Hjort: Baystate Physical Therapy; Life Dimensions Neuropsychological Services, Anna Maria Lasoski; Aspire Heath Alliance and South Shore Therapies, Alexis Kimmelman.

In her submission, Parent cites multiple bases for quashing the subpoenas, including violations of Student’s privacy and the need to preserve confidentiality of certain communications consistent with M.G.L c. 112 §172 (which protects third parties from disclosing medical and mental health information).

Parent concedes that M.G.L. c.233 §20B(c) creates exceptions to privacy protections in instances or proceedings “in which the patient introduces his mental or emotional condition as an element of his claim or defense, and the judge or presiding officer finds that it is more important to the interests of justice that the communication be disclosed than that the relationship between patient and psychotherapist be protected.” Parent argues that while Student’s mental health and emotional conditions are mentioned in the Hearing Request, client/patient confidentiality should be protected and not breached.

Additionally, Parent asserts that the subpoenas are overly broad, having the “appearance of a general search without a specific intent”, and notes that many of the requests are irrelevant to the case. As such Parent seeks to have the subpoenas vacated or modified to ensure relevance and preserve Student’s confidentiality.

1. Non-Party Dana Behavioral Health:

Dana’s initial motion seeking to quash Rockland’s subpoena duces tecum argued that the subpoena only allowed 15 days for response contrary to the 30-days for compliance afforded under Mass.R.Civ.P. 45(d). Additionally, Dana noted that Schedule A was not specifically tailored to Dana and was overly broad and ambitious and imposed an undue burden and/ or expense on Dana. Moreover, Dana argued that the subpoena was unlawful because it sought disclosure of privileged and confidential information lacking in proper authorization or a Court Order consistent with Rule 45(f)(2)(A).

Dana further relied on M.G.L. c.233 §20B and M.G.L c. 112 §172 to assert that all the communications between Dana and Parent/ Student were privileged, and noted that the subpoena also violated the Health Insurance Portability and Accountability Act (HIPAA).

In its reply to the District’s *Opposition to Parent’s Motion to Quash*, Dana argued that the District’s submission was unresponsive to Dana’s argument that, even assuming that privilege was waived, responding to Schedule A of the subpoena[[4]](#footnote-4) was burdensome and not specifically drafted for Dana.

Lastly, Dana requested that if the *Motion to Quash* was denied, an order directing Rockland to revise its Schedule A, tailoring it to specific requests, be entered.

1. Rockland:

Rockland opposes Parent’s *Motion to Quash* subpoenas duces tecum to the entities[[5]](#footnote-5) and individuals listed above, and further opposes the *Motion to Quash* filed by Dana.

Rockland argues that on September 18, 2024, Parent signed consents for releases of information from Bay State Physical Therapy (Angelica Castaneda); South Shore Therapies (Alexis Kimmelman); Life Dimensions (Anna Maria Lasoski PsyD); Aspire Health Alliance (Aiisha Armand, Therapeutic Mentor). Therefore, Rockland asserts that Parent’s Motion as to those entities is frivolous.

Rockland further argues that the information requested via the numerous subpoenas is directly related to the issues raised by Parent in her Hearing Request, namely allegations of denials of FAPE for failure to meet Student’s academic and social emotional needs. Moreover, Parent relies on the diagnostic data, evaluations and recommendations of individuals in the subpoenaed entities to make her case and obtain public funding for a therapeutic out-of-district placement. As such, Rockland argues that the information is excepted from otherwise applicable privilege standards. Preventing Rockland from accessing and reviewing this information prior to Hearing would highly prejudice its ability to defend at Hearing. Lastly, Rockland disputes that the information sought through timely served subpoenas is unreasonably burdensome, noting that it is likely to lead to the discovery of admissible evidence. As such, Rockland requests that Parent’s *Motion to Quash and Vacate* be denied in full.

Rockland advances the same arguments delineated above in its response to Dana’s *Motion to Quash Rockland’s Subpoena Duces Tecum and Reply to the District’s Opposition*, Rockland further argues that it has limited the scope of the request to the period from 2022 to the present, has offered to pay a reasonable fee to cover the expenses, and has agreed to extend the response period to 30-days.

Rockland notes that it attempted to work collaboratively with Parent’s attorney to resolve the discovery disputes and sign releases, but was unable to reach agreement. Lastly, in deference to Dana’s concerns over Student’s privacy, the District agrees to destroy the records when the appellate period ends. Thus, Rockland seeks that Dana’s *Motion to Quash* be denied.

**Legal Framework**:

Rules V, VI and VII of the BSEA Hearing Rules for Special Education Appeals (BSEA Rules) address discovery, motions and subpoenas, in accordance with the Administrative Rules of Practice and Procedure (801 CMR 1.00 et seq.).

BSEA Rule VIIC, specifically provides that

A person receiving a subpoena may request that a Hearing Officer vacate or modify the subpoena. A Hearing Officer may so do 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. BSEA Rule VII.C.

When considering a motion to quash and vacate a subpoena, a Hearing Officer must ascertain whether the documents or testimony sought are relevant to the matter, and may grant such motion if the documents /testimony are found not to be relevant to the issues to be decided, or the breadth of the materials causes undue burden, in which case limitations may be imposed.

Generally, confidential information between a licensed psychologist and the patient is protected pursuant to M.G.L c. 112 §129A. However, this protection does not apply

…[i]n any proceeding… in which the patient introduces his mental or emotional condition as an element of his claim or defense, and the judge or presiding officer finds that it is more important to the interests of justice that the communications be disclosed than that the relationship between patient and psychotherapist be protected. See M.G.L. c. 233 §20B(c).

With this guidance I turn to a discussion of the instant matter.

**Discussion**:

Pursuant to Parent’s Hearing request, Student, “presents with complex needs including hypersensitivity, hyposensitivity and symptoms relating to generalized anxiety disorder, OCD, depression including self-consciousness, low self-esteem, and slow processing speed.” Student has been diagnosed with high cognitive functioning autism moderate severity, “anxiety disorder, obsessive compulsive disorder (OCD), sensory processing and integration disorder, ADHD: Combined Type, unspecified abnormalities of gait and mobility and major depressive disorder, recurrent severe.” The Hearing Request specifically asserts that Rockland has denied Student a FAPE, has not delivered services and/ or accommodations delineated in the IEP, and has failed to address allegations of bullying. Student’s private providers (including his pediatrician, pharmacologist, therapist, psychologist/ neuropsychologist, and an independent evaluator) have recommended that Student’s educational, social, emotional, sensory and motor dysfunction needs be addressed in a therapeutic environment. As such, Parent seeks public funding for Student’s placement in a therapeutic day school, as well as speech and language services and compensatory services. (Parent’s Hearing Request)

At Rockland’s request, the BSEA, issued subpoenas duces tecum to Student’s numerous providers/ evaluators. Parent seeks to have Rockland’s subpoenas to these entities and individuals quashed and vacated, arguing the confidentiality protections of privileged communications, and that the subpoenas are overly broad, unduly burdensome and not likely to lead to the discovery of admissible evidence. At a minimum, Parent seeks to limit the scope of the subpoenas.

Rockland opposes Parent’s motions raising numerous defenses, most importantly, its ability to defend itself at Hearing, given that Parent has placed Student’s social and emotional conditions at the center of the dispute, and because Parent relies on these private evaluators, physicians, psychologists, therapist and pharmacologist’s records and recommendations to support her claim for an out-of-district therapeutic program for Student. As such, Rockland asserts that it is entitled to the records sought.

Rockland first argues that on September 18, 2024, it received signed consent forms from Parent to communicate and exchange information with Bay State Physical Therapy (Angelica Castaneda), and South Shore Therapies (Alexis Kimmelman). These entities have produced documents responsive to the subpoenas issued by Rockland, which documents Rockland has shared with Parents. As such, Rockland asserts that *Parent’s Motion to Quash* and vacate the subpoenas for the aforementioned entities is frivolous.

Second, Rockland asserts that Life Dimensions (Anna Maria Lasoski PsyD), acknowledged receipt of the subpoena and Parent’s consent for release of information, but has not yet produced the documents. Since Dr. Lasoski was directly involved in Student’s assessment and Parent relies on her report and recommendations to support her claim regarding Student’s mental/ emotional condition, Rockland argues that it is entitled to the documents. Rockland continues that Parent’s reliance on Dr. Lasoski’s records and recommendations creates an exception to any privilege defense. Rockland asserts that its request is not unreasonably burdensome, and therefore, Parent’s *Motion to Quash* this subpoena should be denied and an order that the documents be released entered.

Third, as to Aspire Health Alliance (Aspire), Rockland notes that Aspire received the subpoena directed to Aiisha Armand, the individual identified by Parent as Student’s Therapeutic Mentor. Aspire, however, reported that no such person is employed there. Since Parent signed a release for the District to communicate with Aspire, the District argues that it is entitled to the documents (regardless of whether Ms. Armand works there) and asserts that Parent’s *Motion to Quash* is frivolous, and therefore, should be denied.

Fourth, regarding South Shore Health/ South Shore Medical, (South Shore) Dr. Matthew Hjort, Rockland seeks records related to Student’s assessment, care and treatment as specifically provided by Dr. Hjort and other relevant service providers. Dr. Hjort specifically recommended that Student attend a therapeutic high school, allegedly linked to Student reporting high levels of anxiety. Rockland notes that it requires documents from South Shore and Dr. Hjort for the period falling within the IDEA statute of limitations and subject to this Hearing so that it can better understand, assess and plan for Student’s education. Moreover, the documents sought are directly related to Student’s physical and mental health and the request is not unreasonably burdensome.

Rockland also seeks records from Arbour Counseling Services, (Arbour) Jillian Manning, since Arbour and Jillian Manning were directly involved in Student ‘s treatment and care. Parent provided the District correspondence, inclusive of Arbour’s clinical recommendation that Student be placed out of district in a therapeutic program following a partial hospitalization, with no further information to support said recommendation. Rockland asserts that it seeks to review Arbour’s records because they are directly related to Parent’s allegations and the subpoena was timely filed, the request is not unreasonably burdensome, and Rockland would be unfairly prejudiced if it did not have access to these records. As noted in previous instances, since Student’s mental/ emotional condition is at issue, the exception to an asserted privilege is applicable.[[6]](#footnote-6)

Lastly, Rockland seeks denial of Parent’s and Dana’s Motions to Quash and vacate the subpoena duces tecum issued to Dana, as Student has received direct care and treatment and has been evaluated at Dana during the relevant periods of time.

Rockland asserts that while Parent signed releases for the District to communicate and exchange information with several other entities, she refused to sign the release for Dana. Rockland note that its request is specific to relevant records responsive to the issues as delineated in Parent’s Hearing Request.

Dana argues that the subpoena was unlawful because it sought disclosure of privileged and confidential information for which Rockland had not produced parental authorization or a Court Order, consistent with Rule 45(f)(2)(A). Relying on M.G.L. c.233 §20B[[7]](#footnote-7) and M.G.L c. 112 §172[[8]](#footnote-8) Dana asserted that its communications with Parent/ Student were privileged and only the patient (or the legal parent of a minor) can waive said privilege.[[9]](#footnote-9) Dana also argued that the subpoena violated HIPAA.

Rockland responds that denial of access to records and information from Dana would place it at a disadvantage at Hearing, and would be prejudicial given that Parent has placed Student’s mental and emotional health at issue and therefore, the exception to an asserted privilege applies. See M.G.L. c233 §20B(c).

Dana further asserts that Schedule A poses an undue burden and expense, but Rockland disputed these allegations noting that the records requested cover a specific period falling within the IDEA statute of limitations, that is, from August 2022 to the present. Dana also argues that even assuming privilege is waived, responding to Schedule A[[10]](#footnote-10) of the subpoena is burdensome because it is not specifically drafted for Dana. Dana requests that if the Motion to Quash is denied, an order be entered directing Rockland to revise its Schedule A, tailoring its specific requests. Moreover, Dana demands that it be granted 30-days to produce the documents, consistent with Mass.R.Civ.P. 45(d).

Rockland has offered to pay a reasonable fee were Non-Party Dana to charge for production of records, and also assents to the 30-day timeline for production of documents.

Therefore, for a totality of reasons enumerated above, Rockland seeks denial of Parent’s and Dana’s Motion to Quash, citing its prejudicial effect on the District’s ability to defend at Hearing.

Upon consideration of the Parties’ and Dana’s arguments, I am persuaded that Parent’s and Dana’s Motions to Quash and Vacate must be **DENIED**.

Parent has placed Student’s physical, social, emotional, sensory, motor and academic needs at the center of her dispute, and she further relies on the myriad of evaluations, findings, treatment and recommendations of Student’s private providers to support her claim for funding of a therapeutic day placement. As such, Rockland is persuasive that Dana’s and Parent’s reliance on patient privilege is inapplicable.

Further, Rockland’s argument that records sought through the numerous subpoenas duces tecum enumerated, *supra* (inclusive of Dana’s), are essential to Rockland’s defense, relevant, and likely to lead to the discovery of admissible evidence is convincing. Denying the District’s access to those records would thus unfairly prejudice the District and may further impact presentation of evidence at Hearing.

While the records sought are extensive, albeit not overly broad or ambitious, they “are highly relevant and independently admissible, subject to impoundment of the Student’s identifying information”. Further, as Rockland persuasively argues, the records are timely requested and not oppressive or unreasonable.[[11]](#footnote-11) Since Rockland’s requests are comprehensive and will likely yield a voluminous response, as already assented to by Rockland, Dana may charge a reasonable fee for producing the documents and may have 30 days to comply with production of records.

Lastly, given the sensitive nature of the information sought, Parent and Rockland are ordered to confer and submit a proposed protective order within 10 days of the date of issuance of this Ruling that further delineates guidelines for distribution, access, review and disposal of these records at the conclusion of the Hearing. Moreover, Rockland shall provide Parent with a copy of the documents received from the entities and professionals subpoenaed.

**Order**:

1. Parent’s and Non-Party Dana’s *Motion to Quash and Vacate Subpoena Duces Tecum* to Dana Behavioral Health; Arbour Counseling Services; South Shore Health, South Shore Medical Center- Pediatrics Dr. Matthew Hjort; Baystate Physical Therapy; Life Dimensions Neuropsychological Services, Anna Maria Lasoski; Aspire Heath Alliance and South Shore Therapies, Alexis Kimmelman is DENIED, consistent with this Ruling.
2. Parent and the District shall submit a proposed protective order within 10 days of the date of issuance of this Ruling, consistent with the guidelines delineated above.

So Ordered by the Hearing officer,

Rosa I. Figueroa

Rosa I. Figueroa

Dated: January 31, 2025

1. This request seeks “[c]omplete copies or any and all records including medical records, reports, evaluations, assessments, progress reports, whether formal or informal, tests, test data, test protocols, testing observations notes, work sheets, data and measurements pertaining to the Student from August 2022 to present.” [↑](#footnote-ref-1)
2. “[c]omplete copies of any and all correspondence, electronic mail messages, text messages, telephone records, tape recordings, video recordings, photographs, notes, minutes, diaries, letters, and/or memoranda pertaining to the Student from August 2022 to present”. [↑](#footnote-ref-2)
3. “[a]ll correspondence, including but not limited to letters and electronic mail, between Parent(s)/ Student and yourself and/or any non-attorney advocates regarding the Student”. [↑](#footnote-ref-3)
4. The District’s request herein was for “complete copies of any and all correspondence, electronic, mail messages, telephone records, tape recording, video recordings, photographs, notes, minutes, diaries, letters, and/ or memoranda… complete copies of agreements, contracts, bills, invoices… communications with parent(s)/ student and advocates for student”. [↑](#footnote-ref-4)
5. Bay State Physical Therapy; South Shore Therapies; Life Dimensions Neuropsychological Services (Life Dimensions), Anna Maria Lasoski PsyD; Aspire Health Alliance; South Shore Health; South Shore Medical, Dr. Matthew Hjort; Arbor Counseling Services; and Dana. [↑](#footnote-ref-5)
6. See M.G.L. c. 233 §20B(c). [↑](#footnote-ref-6)
7. Privileged communications include “conversations, correspondence, actions, and occurrences relating to diagnosis or treatment regardless of the patient’s awareness of such conversations, correspondence, actions and occurrences, and any records, memoranda or notes…”. M.G.L. c.233 §20B. [↑](#footnote-ref-7)
8. “[A]ny communication between an allied mental health or human services professional and a client shall be deemed to be confidential.” M.G.L c. 112 §172. [↑](#footnote-ref-8)
9. According to Dana, pursuant to 262 CMR 8.03, the privilege of a patient’s record extends to “at a minimum: (a) a signed informed consent document; (b) an intake summary; (c) an assessment or diagnosis; (d) a treatment plan; (e) dates and progress notes for each treatment session; (f) communications with collateral entities; (g) communications with clients relating to treatment, including electronic communications; and (h) a termination summary….” [↑](#footnote-ref-9)
10. Schedule A seeks “complete copies of any and all correspondence, electronic, mail messages, telephone records, tape recording, video recordings photographs, notes, minutes, diaries, letters, and/ or memoranda… complete copies of agreements, contracts, bills, invoices… communications with parent(s)/ student and advocates for student”. [↑](#footnote-ref-10)
11. See *In Re: Isa, Ruling on Parent’s Motion to Reconsider and Parent’s Motion to Vacate or Quash Subpoenas*, BSEA 2500461 (Reichbach, 2024). [↑](#footnote-ref-11)