**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Old Colony Regional Vocational

Technical High School BSEA No. 2508424

v.

Student

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**RULING ON OLD COLONY REGIONAL VOCATIONAL TECHNICAL HIGH SCHOOL’S MOTION FOR PROTECTIVE ORDER**

**AND**

**OLD COLONY REGIONAL VOCATIONAL TECHNICAL HIGH SCHOOL’S**

 **MOTION TO VACATE THE SUBPOENA FOR PROTECTED WORK PRODUCT**

This matter comes before the undersigned Hearing Officer on the *Motion for Protective Order* and *Motion To Vacate The Subpoena For Protected Work Product* filed by Old Colony Regional Vocational Technical High School (Old Colony or the District) on April 7, 2025 and April 21, 2025, respectively.

Because a hearing on this motion would not provide me with any necessary additional information, this Ruling is being issued on the basis of the parties’ written submissions.

For the reasons articulated below, Old Colony’s *Motion for Protective Order* is ALLOWED, in part, and DENIED, in part. The District’s *Motion To Vacate The Subpoena For Protected Work Product* is ALLOWED.

**Procedural Background**

On February 13, 2025, Old Colony filed a *Request for Hearing* with the Bureau of Special Education Appeals (BSEA) seeking substituted consent for a three-year re-evaluation of Student. The matter was assigned to Hearing Officer Sara Berman and scheduled for hearing on March 5, 2025. Parents filed a Response on March 6, 2025, in which they objected to the request for substituted consent, agreed to the triennial evaluation, requested a comprehensive psychological assessment in Student’s areas of disability, and requested postponement of testing until September 2025 due to concerns that earlier testing would adversely affect Student’s emotional well-being. On March 12, 2025, a pre-hearing conference was held at which the parties agreed to postpone testing until September 2025. Upon the parties’ request, the hearing in this matter was postponed again for good cause to May 29 and 30, 2025.[[1]](#footnote-1)

On or about March 24, 2025, Parents served the District with their *First Request for Production of Documents.* On April 7, 2025, the District filed the above-referenced *Motion for Protective* *Order*, in which it objects to each of Parents’ document requests, asserting, in general, that the requests are overly vague and unduly burdensome. Old Colony further notes that the discovery request was served despite apparent agreement of the parties, during the pre-hearing conference, on resolution of the central issue raised in the *Hearing Request* and *Response.* On April 17, 2025, Parents filed an *Opposition to the District’s Request for a Protective Order*, in which they respond to each of the District’s assertions.

On April 8, 2025, Parents filed a *Request for Subpoena Duces Tecum* seeking notes taken during the April 4, 2025, IEP meeting by Mary Ellen Sowyrda to include any records, files, documents, or other material that contains information related to Student in any format, including handwriting, print, computer media, video, audio, film, microfilm, and microfiche. On April 21, 2025, Old Colony filed its *Motion To Vacate The Subpoena For Protected Work Product* seeking to vacate/quash the Subpoena requested by Parents on the grounds that the request for information is “a prohibitive violation of Old Colony’s right to protected work product by its legal counsel.”

On May 28, 2025, the matter was rescheduled to begin on May 30, 2025.[[2]](#footnote-2) Also on May 28, 2025, the matter was reassigned to Hearing Officer Alina Kantor Nir for administrative reasons.

**Legal Framework**

1. **Procedural Framework for Discovery and Objections at the BSEA**

Rule V of the Hearing Rules for Special Education Appeals encourages informal exchanges of information by parties, (Rule V.A.), but also provides for formal discovery via requests for production of documents (Rule V.B.1.), interrogatories (Rule V.B.2.), and, under limited circumstances, with hearing officer approval, depositions. (Rule V.B.3.) Rule V.B. specifies that “[t]he party upon whom the request is served shall respond within a period of thirty (30) calendar days unless a shorter or longer period of time is established by the Hearing Officer.”

A party who objects to responding to some or all of a discovery request must file such objection within 10 calendar days of the request, as set forth in Rule V.C. as follows:

The party upon whom a request for discovery is served may, within ten (10) calendar days of service of the request, file with the Hearing Officer objections to the request or move for a protective order. Disputes regarding discovery shall be resolved whenever possible by conference call. Protective orders may be issued to protect a party from undue burden, expense, delay, or as otherwise deemed appropriate by the Hearing Officer. Orders of the Hearing Officer may include limitations on the scope, method, time and place for discovery or provisions protecting confidential information.

In order to prevent conflict between the thirty-day deadline for a party to respond to the discovery request and the ten-day deadline for filing objections to the request, the BSEA has adopted a long-standing practice of requiring parties to file a *Notice of Objections* within the ten-day period, which may be elaborated during the subsequent thirty-day period.[[3]](#footnote-3)

In the instant case, on information and belief, Parents served their discovery requests on March 24, 2025. As such, the District’s responses were due by April 23, 2025, unless a shorter or longer period of time had been requested and ordered by the Hearing Officer. A ten-day Notice of Objections would have been due ten days from service of the discovery request, i.e., April 3, 2025. The District did not file its Objections and request for protective order until April 7, 2025, four calendar days past the due date.

Pursuant to Rule V(C) of the *Hearing Rules*, Parents’ *Objection* to *the Motion for Protective Order* also was due seven calendar days after the District’s Motion, i.e., on April 14, 2025, and but was not filed until April 17, 2025, three days after the deadline established by the Rule. Because both the District’s Motion and Parents’ Objections were filed untimely by a few days, I exercise my discretion to rule on the substance of the Motion.

1. **Legal Framework for Scope of Discovery[[4]](#footnote-4)**

BSEA Hearing Rule V (1) allows any party to request another party to produce documents that “are not privileged, not supplied previously, and which are in the possession, custody and control” of the party to whom the request is made. Similarly, Rule V.B.2 allows for service of written interrogatories for discovery of information that is “relevant, not privileged” and not previously supplied by the party on whom the interrogatories are served.

In applying this Rule, BSEA hearing officers are guided (although not bound) by Rules 26(b)(1) of the Federal and Massachusetts Rules of Civil Procedure. The Federal rule allows discovery of “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues…the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs the likely benefit. The material discovered need not be admissible at the hearing. Massachusetts Rule (26)(b)(1) also allows discovery of relevant, non-privileged information, which need not be admissible at trial if it “appears reasonably calculated to lead to the discovery of admissible evidence.”

While the BSEA, guided by the courts, interprets the above-cited rules liberally, hearing officers may limit the scope of discovery and issue protective orders to “protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” In determining whether a discovery request meets the criteria for a protective order, the hearing officer considers “(1) whether it is possible to obtain the information from some other source that is more convenient or less burdensome or expensive; (2)whether the discovery sought is unreasonably cumulative or duplicative; and (3) whether the likely burden or expense of the proposed discovery outweighs the likely benefit of its receipt, taking into account the parties’ relative access to the information, the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.”[[5]](#footnote-5) A protective order may prohibit or limit the discovery of certain items, or may set conditions such as, for example, requiring that material discovered be destroyed or returned at the conclusion of litigation.[[6]](#footnote-6)

1. **Legal Framework for the Quashing or Vacating of a Subpoena**

Pursuant 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.

**Analysis**

I now apply the legal framework outlined above to the instant case. For the sake of efficiency, I will summarize, but will not reproduce verbatim, the specific requests for production or interrogatories and the District’s responses.

1. Request No. 1: Resumes or CVs for eight named or identified District employees and “any IEP team member or potential team member.”

Response No. 1: CVs of staff are exempt from disclosure as personnel records and are also irrelevant and not reasonably calculated to lead to discovery of admissible evidence.

Parents’ Opposition No. 1: The information is relevant to demonstrate Parents’ claims that District staff is inadequately educated or trained regarding Student’s disability and potential harm to Student from District’s proposed testing. Additionally, Parents would agree to redaction of potentially embarrassing or personal information on resumes.

Ruling on Request No. 1: The District’s request for a protective order regarding staff CVs is DENIED because the information contained therein may be relevant or lead to discovery of relevant evidence. The District shall supply the CVs requested, redacting any personal information such as home addresses/telephone numbers, and the like.

1. Request No. 2: All email and text messages sent or received by certain listed District staff, from any personal, work, or District device(s) or email addresses.

Response No. 2: The request is ambiguous, vague, overly broad, unlimited in time, unduly burdensome, irrelevant, and seeks discovery of confidential personal email addresses.

Parents’ Opposition No. 2: The information requested is part of Student’s record as set forth in Federal and State law and is not privileged.

Ruling on Request No. 2: The *Motion for Protective Order* is DENIED, IN PART as to Request No. 2, except that personal email addresses for District employees shall be redacted, the documents produced shall be limited to those referencing Student, and they shall be limited to the 2024-2025 school year.[[7]](#footnote-7)

1. Request No. 3: Training or instructional materials provided to District staff regarding students’ rights under the IDEA, the Americans with Disabilities Act (ADA), and Title 34 of the Code of Federal Regulations.

Response No. 3: The request is ambiguous, vague, overly broad, seeks information prior to Student’s enrollment in the District or outside of the statute of limitations, and/or unduly burdensome, irrelevant, and/or confidential and privileged.

Parents’ Opposition No. 3: Parents seek information to allow the District the opportunity to prove they trained their staff but would limit inquiry to 2024-2025 school year.

Ruling No. 3: The request for a protective order is GRANTED as to Request No. 3 as the materials requested are not relevant or calculated to lead to admissible evidence, and the burden and expense of the discovery outweighs the likely benefit.

1. Request No. 4: All IEP meeting notes taken by any team member that have not been provided to Parents.

Response No. 4: The request is ambiguous, vague, overly broad, unlimited in time and/or seeks information prior to Student’s enrollment in the District, seeks irrelevant information beyond the Statue of limitations and is unduly burdensome.

Parents’ Objection No. 4: Parents seek emails and text messages concerning Student transmitted from one District employee to at least one other, limited to the 2024-2025 school year, as these are part of Student’s educational record, to which Parents are entitled.

Ruling No. 4: To the extent not already included in Ruling No. 2, the *Motion for Protective Order* is DENIED, and the District shall provide the information requested.

1. Request No. 5: Any written policy or other documentation that describes the care and custody of written notes taken during an IEP meeting dated within the last five years.

Response No. 5: The request is ambiguous, vague, overly broad, unlimited in time and/or seeks information prior to Student’s enrollment in the District, seeks irrelevant information beyond the Statue of limitations and is unduly burdensome. Without waiving said objection, the District refers the Parent to Old Colony School Committee Policy JRA and JRA-R, which are publicly available.

Parents’ Opposition No. 5: If the items are already in the public domain, the district cannot show good cause for the protective order. Parents requested a five-year look back to give the district the best possible chance of proving they gave their employees training in the area where the disclosure is sought; however, parents are happy to limit the time frame to the 2024/2025 school year.

Ruling No. 5: The request for a protective order is GRANTED as to Request No. 5 as the materials requested are not relevant or calculated to lead to admissible evidence.

1. Request No. 6: Any written policy or other documentation that authorizes school personnel to shred, destroy, burn, delete, or otherwise discard any notes taken during an IEP meeting within the last five years.

Response No. 6: The request is ambiguous, vague, overly broad, unlimited in time and/or seeks information prior to Student’s enrollment in the District, seeks irrelevant information beyond the Statue of limitations and is unduly burdensome. Without waiving said objection, the District refers the Parent to Old Colony Regional Vocational Technical High School Committee Policy JRA and JRA-R, which are publicly available.

Parents’ Opposition No. 6: If the items are already in the public domain, the district cannot show good cause for the protective order. Parents requested a five-year look back to give the district the best possible chance of proving they gave their employees training in the area where the disclosure is sought; however, parents are happy to limit the time frame to the 2024/2025 school year.

Ruling No. 6: The request for a protective order is GRANTED as to Request No. 6 as the materials requested are not relevant or calculated to lead to admissible evidence.

1. Request No. 7: Any training or instructional materials provided to the district administration or staff that discuss, educate, inform, advise, communicate, enlighten, instruct, notify, teach, train, or coach administration or staff on how to comply with the record-keeping of the IDEA, or Title 34.

Response No. 7: The request is ambiguous, vague, overly broad, unlimited in time, and/or unduly burdensome. It seeks discovery of information that the law considers confidential and/or privileged. It also seeks discovery of irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

Parents’ Opposition No. 7: A recurring theme of the instant case is the district’s failure to follow the provisions of the IDEA and Title 34. Parents requested a five-year look back to give the district the best possible chance of proving they gave their employees training in the area where the disclosure is sought; however, parents are happy to limit the time frame to the 2024/2025 school year.

Ruling No. 7: The request for a protective order is GRANTED as to Request No. 7 as the materials requested are not relevant or calculated to lead to admissible evidence.

1. Request No. 8: Any training or instructional materials provided to the district administration or staff that discuss, educate, inform, advise, communicate, enlighten, instruct, notify, teach, train, or coach administration or staff on how to interact with children with PTSD and or Generalized Anxiety Disorder.

Response No. 8: The request is ambiguous, vague, overly broad, unlimited in time, and/or unduly burdensome. It seeks discovery of information that the law considers confidential and/or privileged and seeks discovery of irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

Parents’ Opposition No. 8: Another recurring theme of the instant case is the district’s failure to understand how its action can trigger Student and its catastrophic results. The district staff clearly has never tried to interact with a child with these disabilities or simply does not care to. Since the last hearing in this matter, Kelly Taviera has continued to advocate for a course of action that has the potential to cause Student harm. It is difficult to imply that discovery in an area that is irrelevant and not reasonably calculated leads to the discovery of admissible information.

Ruling No. 8: The request for a protective order is GRANTED, IN PART, and DENIED, IN PART as to Request No. 8. The materials requested are overly broad. However, with regard to the District’s chosen evaluators for the re-eevalutaion at issue, the District must produce the information responsive to the request.

1. Request No. 9: Any video information or footage with meta-data attached, which indicates Student used a restroom at a time when a vape detector was activated.

Response No. 9: Old Colony seeks a Protective Order regarding this Request to the extent that it seeks discovery of irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

Parents’ Opposition No. 9: The district has already provided some of this information. To the extent it was needed, the district has already complied. Since the information was already provided, it is impossible for the district to show good cause for the protective order.

Ruling No. 9: The request for a protective order is DENIED as to Request No. 9, and the District must produce the information responsive to the request.

1. Request No. 10: Any vape detector logs that indicate the vape detector may have alarmed or alerted while Student was in the bathroom?

Response No. 10: Old Colony seeks a Protective Order regarding this Request to the extent that it seeks discovery of irrelevant information not reasonably calculated to lead to the discovery of admissible evidence.

Parents’ Opposition No. 10: The district has already provided some of this information. To the extent it was needed, the district has already complied. Since the information was already provided, it is impossible for the district to show good cause for the protective order.

Ruling No. 10: The request for a protective order is DENIED as to Request No. 10, and the District must produce the documents responsive to the request.

With regard to the Subpoena Duces Tecum sought by Parents, I find that quashing/vacating thereof is appropriate. Not only are attorney notes protected from disclosure from opposing parties in litigation under the doctrine of attorney work product[[8]](#footnote-8), but also the subpoena seeks discovery of irrelevant information not reasonably calculated to lead to the discovery of admissible evidence where the sole issue to be decided is whether Parents’ refusal to consent to the re-evaluation proposed by the District, will result in the denial of a free appropriate public education (FAPE) to Student, and, thus, substitute consent should be awarded. As such, the District’s *Motion To Vacate The Subpoena For Protected Work Product* is ALLOWED.

**ORDER:**

Old Colony’s *Motion for Protective Order* is ALLOWED, in part, and DENIED, in part, in accordance with this Ruling. The District’s *Motion To Vacate The Subpoena For Protected Work Product* is ALLOWED.

By the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir

Date: May 29, 2025

1. The parties subsequently agreed to begin the Hearing on May 30, 2025. [↑](#footnote-ref-1)
2. This order was made by Hearing Officer Berman due to the parties’ delay in submitting exhibits and witness lists. [↑](#footnote-ref-2)
3. See *In Re: Danvers Public Schools*, BSEA No. 12-3302 (Berman, 2012); *In Re: Springfield Public Schools, Ruling on Parent’s Motion to Compel*, BSEA No. 2406592 (Berman, 2024). [↑](#footnote-ref-3)
4. As stated in Parents *Objection*, the BSEA’s practice for addressing discovery and issuing protective orders is set forth in numerous rulings. See, for example, *In Re: Springfield Public Schools*, BSEA No. 2208440 (Kantor-Nir, 2022); *In re: Mattapoisett Public* *Schools,* BSEA No. 06-6153 (Crane, 2007); *In Re: Andover Public Schools*, BSEA No. 150008 (Berman, 2026). [↑](#footnote-ref-4)
5. Mass. R. Civ. Pro., Rule 26(c). See also Fed. R. Civ. Pro., Rules 26(b), (c). [↑](#footnote-ref-5)
6. *Id*. See also, *In Re Vic & Wellesley Public Schools*, BSEA No. 1503712 (Oliver, 2015). [↑](#footnote-ref-6)
7. See *In Re: Arlington* *Public Schools*, BSEA # 1611465 (Figueroa, 2016). [↑](#footnote-ref-7)
8. See *Hickman v. Taylor*, 329 U.S. 495, 510 (1947); see also Fed. R. Civ. P. 45 (d)(3)(A)(iii) (quashing a subsmpena is required where the subpoena requires disclosure of *privileged or other protected matter*, if no exception or waiver applied) [↑](#footnote-ref-8)