**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

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

Old Colony Regional Vocational

Technical School District BSEA No. 2508424

v.

Student

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

**ORDER REGARDING PARENTS’ REQUEST FOR SUBPOENA *DUCES TECUM***

On April 4, 2025, Parents emailed a request that the BSEA issue a subpoena *duces tecum* directing the School’s counsel to produce notes taken by counsel between 11:00 AM and 1:00 PM at a Team meeting held on April 4, 2025. The request for a subpoena appears to follow upon an email exchange between Parents and School counsel in which Parents requested a copy of School counsel’s notes and School counsel declined to produce same on grounds of attorney-client privilege, and because the notes requested do not constitute student records. Parents disputed School counsel’s position on these issues.

Rule VII.B. of the *Hearing Rules for Special Education Appeals* (*Hearing Rules*), provides that the BSEA “shall issue” subpoenas and/or subpoenas *duces tecum* at the request of a party. Rule VII.C. provides that a recipient of such subpoena who objects to compliance may request that the Hearing Officer vacate or modify the subpoena, and that the Hearing Officer may do so “upon a finding that the…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.” In addition to Rule VII.C, the BSEA also is guided by Rule 45 (c)(3)(A)(iii) of the Federal Rules of Civil Procedure, which requires quashing or modification of a subpoena which “requires disclosure of privileged or other protected matter, if no exception or waiver applies.”

Accordingly, Parents’ request for a subpoena shall be addressed as follows:

1. Parents shall re-file the request in a Word attachment to an email, copied to School counsel, and shall include in the request a description of the document(s) sought, the address to which Parents seek to have the documents delivered, and the date by which Parents seek delivery.
2. Upon receipt of this request, the BSEA shall issue the subpoena.
3. If School counsel opposes compliance with the subpoena, counsel shall file and serve a *Motion to Vacate or Modify* the subpoena, also as a Word attachment to an email.
4. Pursuant to Rule VI.C. of the *Hearing Rules*, Parents may file and serve written objections to the *Motion* within seven calendar days of receipt.
5. Upon receipt of both the *Motion to Vacate or Modify* and any opposition to the *Motion*, the Hearing Officer will issue a ruling on whether or not the School counsel must comply with the subpoena.

By the Hearing Officer,

/s/ Sara Berman

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Sara Berman

Date: April 7, 2025