**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: Student v. ` **BSEA#** 2400718

Dracut Public Schools

**Ruling on Dracut Public Schools’ Motion to Quash Subpoenas For Jessica Wojcik, Betsy Kusa, Jennifer Fowler, Barbara Boucher and Julia Staub** **and Parent’s Motion to Compel the District to Produce Discovery and Parent’s Motion to Compel Discovery**

Between September 20 and October 23, 2023, Parent and the District engaged in requests for subpoenas, a motion to quash and requests to compel discovery triggering the Rulings below. These Rulings are issued in consideration of the Parties’ submissions in relation to those issues for Hearing that survived the Motion to Dismiss.[[1]](#footnote-1) (I note that the Hearing in this matter, currently scheduled for December 15, 2023, was continued for good cause.)

1. **Motion to Quash Subpoenas For Jessica Wojcik, Betsy Kusa, Jennifer Fowler, Barbara Boucher and Julia Staub**

On September 20, 2023, Parent in the above-referenced matter requested issuance of subpoenas to seven Dracut Public Schools’ (Dracut or District) employees. The subpoenas were issued by the BSEA on September 21, 2023.

On October 5, 2023, the District filed a *Motion to Quash Subpoenas For Jessica Wojcik, Betsy Kusa, Jennifer Fowler, Barbara Boucher and Julia Staub* (Motion). The District argued that pursuant to the Ruling issued on September 29, 2023, dismissing some of Parent’s claims and narrowing the issues for Hearing, the witnesses on whose behalf Dracut brings this Motion were not pertinent as they had no direct involvement in the issues remaining for Hearing, and because “appearing for Hearing in a matter of which they have no personal information … would be an undue burden”.

Parent rebutted the District’s claims on October 5, 2023, asserting that the five subpoenas Dracut seeks to quash are for individuals who had personal knowledge of the bullying incident involving Student, which the District failed to investigate, and the District’s alleged failure to follow the Section 504 Plan in effect at the time of the incident.

Specifically, Parent argued that the testimony of these witnesses was necessary because: 1) Jessica Wojcik (Vice Principal) immediately intervened in one of the incidents, removed Student from the class for an unspecified period of time, notified Parent of the incident, and she did not follow Student’s Section 504 Plan; 2) Betsy Kusa, Coordinator of Health Services, violated Student’s Section 504 plan on several occasions by disregarding the Section 504 Plan’s accommodation requiring that Parent be called, asserting that there was “no medical reason to call Parent”; 3) Jennifer Fowler, Kindergarten teacher, was Student’s teacher and has information regarding incidents of bullying and the District’s failure to implement the Section 504 Plan; 4) Barbara Boucher, Student’s teacher for approximately five months, witnessed the majority of the incidents, observed their impact on Student, and can express an opinion on interventions that may be helpful for Student; and, 5) Julia Staub, paraprofessional[[2]](#footnote-2), was responsible for the class the day of the first alleged bullying incident, was the individual to whom Student reported the incident and she “may” have knowledge of “possible violations” of Student’s Section 504 Plan. Parent argued that unresolved incidents of bullying and issuance of an appropriate Section 504 Plan are the reasons why a plan which Parent can sign has not been developed. She noted that she also awaits development of an appropriate Safety Plan.

The question of whether or not a bullying incident occurred is not an issue in the instant matter. However, the effects of same on Student’s current presentation and disabilities, the District’s response to the alleged events in the development of Student’s Section 504 Plan, the appropriateness of the Section 504 Plan, the District’s implementation of the accommodations contained in an accepted Section 504 Plan for Student, possible denials of FAPE and procedural violation are before me.

With respect to witnesses Ms. Kusa, Ms. Staub and Ms. Fowler, Parent offers vague arguments in support of the need for their testimony, and provides no specificity regarding a time period for their alleged involvement. Parent also does not connect the information these three witnesses may be able to provide with the issues at hand. Moreover, it would appear that the information these witnesses could provide may be repetitive and cumulative, as they would testify to alleged incidents other witnesses are better able to describe. Further, in the case of Ms. Fowler (Kindergarten teacher), her testimony is stale, as Student is currently a third grader, and irrelevant to the development and implementation of Student’s first, second or third grade Section 504 Plans.

Therefore, the District’s Motion to Quash the subpoenas for Ms. Kusa, Ms. Staub and Ms. Fowler is **GRANTED**. These subpoenas are quashed, and Parent will not be allowed to request them again for the Hearing on December 15, 2023.

The testimony of Ms. Boucher, Student’s teacher for the 2022-2023 school year, would appear to be relevant to the issues for Hearing (as long as is not cumulative or repetitive) and therefore, the District’s Motion to Quash her subpoena is **DENIED**. Ms. Boucher may be called as a witness.

Based on the limited information on the record, it is unclear whether the incident and failure to implement Student’s Section 504 Plan involving Ms. Wojcik occurred after July 24, 2021. If it did, her testimony would appear to be relevant to some of the issues for Hearing. If Parent can show that the incident referenced and failure to implement an accepted Section 504 Plan occurred within the IDEAs two years statute of limitations, she may call Ms. Wojcik as a witness. Therefore, the District’s Motion to Quash is **ALLOWED WITHOUT PREJUDICE**. Parent may renew her request for issuance of a subpoena for this witness and the District may renew its Motion to Quash consistent with this Ruling.

1. **Parent’s Motion to Compel the District to Produce Discovery**:

At 9:25 p.m. on Saturday October 21, 2023, Parent filed *a Motion to Compel the District to Produce Discovery* which the District had been ordered to produce by the close of business on October 20, 2023. The District responded later during the evening of October 21, 2023, indicating that it had delivered the documents responsive to Parent’s Discovery requests via FedEx at 2:40 p.m. on October 20, 2023, and produced a copy of the FedEx delivery confirmation sheet. At 10:10 p.m. that evening Parent protested that she had not received it and that she had also not received the electronic version consistent with one of her ADA accommodation requests. After some additional email exchanges between the Parties, on October 23, 2023, the District sent, via FedEx, a second hard copy packet containing the documents responsive to Parent’s Discovery requests, and also forwarded an electronic version of the documents as requested.

As such, the issue is deemed to be moot and thus, no ruling need be entered in this regard.

1. **Parent’s Motion to Compel Discovery**:

On October 23, 2023, Parent filed an additional *Motion to Compel Discovery*, noting her belief that the District failed to forward to her documents responsive to requests number #8, #9, #10 and #11, including two electronic exchanges involving Ms. Boucher, which, Parent asserted, were responsive to request #10 and supported her belief that the District also had documents supportive of request #11 which it had not produced. Parent separately forwarded a copy of the two exchanges missing from the District’s response packet which were in her possession.

Taking into account the determinations in my previous Ruling on discovery issued on October 5, 2023, to the extent that the District continues to have documents in its possession responsive to Parent’s discovery requests 8 through 11, that have not yet been released, the District is ordered to do so immediately. If after conducting a search it finds no additional documents, the District shall provide a statement that it released what was in its possession and can find no other documents.

Lastly, Parent’s allegations that the District may have concealed information relevant to the issues for Hearing may be more appropriately addressed at Hearing through examination of witnesses such as Ms. Boucher.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Rosa I. Figueroa

Dated: November 3, 2023

1. The issues for Hearing involve procedural and substantive allegations regarding Student’s Section 504 Plan, including the impact of the alleged bullying incidents on the development of such 504 Plan, the appropriateness of the Section 504 Plan developed by the District, and implementation or lack thereof of an accepted Section 504 Plan, as well as alleged denials of FAPE. [↑](#footnote-ref-1)
2. Parent noted that Ms. Staub was a substitute teacher but the District clarified that she is a paraprofessional. [↑](#footnote-ref-2)