

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

Bureau of Special Education Appeals

Student

&

BSEA No. 1803791

Hampden-Wilbraham R.S.D.

RULING ON REQUEST FOR RELIEF AND NOTICE OF HEARING

On October 23, 2017, Parents filed a hearing request with the BSEA seeking an order directing the Hampden-Wilbraham Regional School District (H-W or School) to fund Student's placement for the 2017-2018 school year at the Curtis Blake School, a DESE-approved private day school for students with language-based learning disabilities located in Springfield, MA. Additionally, Parents seek "an order precluding the District from presenting evidence concerning its own proposed program as a sanction for its interference with parental rights to observation." This request is based on Parents' allegation that in September 2017, H-W unlawfully prohibited Parents' chosen observer, "Ms. X", from observing the School's proposed program based on its assertion that Ms. X, who is a speech/language pathologist, had improperly critiqued teacher performance during a prior observation conducted in 2014, and that such critique was a "teacher evaluation" that was contrary to "district policy."

In its response to Parents' hearing request, H-W stated that Ms. X's 2014 report was "replete with criticism of staff instructional approaches," despite Ms. X's having signed a standard agreement with H-W to the effect that she would not be evaluating teachers in her observation. H-W indicated that it had not consented to the observation requested in September 2017 given Ms. X's "propensity to violate the Observation Agreement," but would reconsider permitting such observation if she agreed in writing to "refrain from using the observation to critique or evaluate teachers' performances."

During a conference call held on November 22, 2017 the parties requested and were granted permission to brief the issue Ms. X's proposed observation. Accordingly, on December 12, 2017, Parents filed a Motion for Relief due to District's Refusal to Permit Observation. In that Motion, Parents repeated their request to bar introduction of information regarding the School's proposed program, and also proposed as alternative relief that H-W be ordered to fund

Student's placement from September 2017 until issuance of a decision in this matter. The School filed its response on December 26, 2017.

Parents argue that the relevant portion of GL c. 71B§3 as well as its implementing regulation, 603 CMR 28.07(1)(a)(1), as interpreted by DESE's Technical Assistance Advisory SPED 2009-2 unequivocally grant them the right to observation of the School's proposed program by an individual of their choosing, in this case, Ms. X, provided that the observer respects student confidentiality and the integrity of the educational program. The School counters that evaluations of teacher performances are heavily regulated by statute, regulation, DESE guidance and collective bargaining agreements and do not include feedback by parents or their designees; further, that respect for the integrity of the program precludes critiques of a teacher's performance by a parent or parent representative.

Without further discussion of the underlying facts and the parties' additional arguments, and based on the entirety of the parties' submissions as well as their statements during the November 22, 2017 conference call, I conclude that H-W acted incorrectly when it denied Ms. X access to the proposed program for observation purposes and later conditioned such access on a promise not to "evaluate" teachers.

It is clear that the purpose of the relevant provisions regarding teacher evaluations is not to prohibit parents and/or their experts from commenting on a teacher's methodologies or instructional techniques in a post-observation report, especially when such comments are directly tied to the "fit" between child's identified needs and the teaching practices described, which was the case with the 2014 observation report referred to in the instant case. Rather, these provisions govern the relationship between the teacher and his or her employer, and appear designed to ensure that teachers' performance evaluations are fair, reasonable, and objective. It is the employer, *i.e.*, representatives of the school district, which conducts the teacher evaluations at issue, not parents or their designees. If any teacher believes that a school district has included or considered impermissible material¹ in that teacher's performance evaluation, his or her dispute lies with the district/employer, not with the parent or other individual who has made statements outside of the teacher evaluation process.

Having determined that the School's actions were improper in this instance, the remaining issue is the appropriate remedy. On November 22, 2017, hearing dates were established for January 22, 23, and 26, 2018. At some point between September 2017, when Parents first requested the observation, and November 22, 2017, Ms. X went on maternity leave, becoming unavailable until late February or early March 2018. Parents argue that postponement of the hearing until Ms. X returns from leave and conducts an observation prejudices Parents by

¹ For example, a teacher might object to a district's consideration of a derogatory social media post made by a parent.

forcing them to incur continued expenses from their unilateral placement of Student; alternatively, proceeding with a different observer deprives them of Ms. X's expertise. The School argues that a brief postponement would not unduly prejudice Parents, and opposes any order for public funding of Student's placement that is based solely on pleadings and argument, without an evidentiary hearing.

After discussion with counsel in a conference call held on January 12, 2018, I conclude the following:

1. The Parents' request for an evidentiary sanction (barring the School from introducing evidence about its proposed program) is DENIED as excessive in light of all of the circumstances, especially considering that such a sanction would deprive the Hearing Officer of information necessary to determine what constitutes a free, appropriate public education (FAPE) for Student.
2. The Parents' request for funding of the private placement from September 2017 until the date of a decision before an evidentiary hearing has been conducted is DENIED.
3. As agreed by the parties, the hearing in this matter will proceed on **March 19, 20, 21 and 23, 2018, beginning at 10:00 AM at the offices of Catuogno Court Reporting Services, 446 Main Street, 16th floor, Worcester, MA.** The parties shall file and exchange proposed exhibits and witness lists by close of business on March 12, 2018. Any further requests for postponement must be made in writing. If the parties settle this matter prior to hearing, the moving party must file a written withdrawal of the hearing request.

By the Hearing Officer,

Dated: January 12, 2018