

**COMMONWEALTH OF MASSACHUSETTS**  
**DIVISION OF ADMINISTRATIVE LAW APPEALS**  
**BUREAU OF SPECIAL EDUCATION APPEALS**

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In Re: Student

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BSEA No. 2004105

Malden Public Schools

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**RULING ON MOTION FOR PROTECTIVE ORDER**

One of the issues in this matter is whether or not Student is able to safely enter and exit his school building (the Beebe Elementary School) or whether, as Parents allege, his access to school is compromised by inadequate and/or inappropriately located handicapped parking spaces, unreliable bus transportation, and related obstacles.

During the first day of hearing on August 18, 2020, witness Kate Greco testified that the Beebe School principal, Dr. Kariann Murphy, was actively engaged in trying to improve the traffic/parking situation. Ms. Greco further testified that Dr. Murphy had meetings with various concerned parents and others regarding this issue, including a meeting or conversation with Parent on or about August 29, 2019. Ms. Greco stated that Dr. Murphy was “a diligent note-taker” who usually took notes during these conversations and meetings so that she could “contemplate...later, what she could do to help alleviate the situation.” (Testimony of Greco, Tr. I, pp. 153-154.) During the hearing, Parents made an oral request for an order directing Malden to produce Dr. Murphy’s notes from the conversation of August 29, 2019, arguing that these notes would have been responsive to Discovery Requests Nos. 6, 7, and 8, but were not produced by Malden.

The above-referenced discovery requests sought production of “any and all written communication, including but not limited to emails” that representatives of the Malden Public Schools have had with the City of Malden, with Parents, other parents, visitors or others regarding parking and traffic problems around the Beebe School or regarding Parents’ (and others’) complaints about said problems.

On August 27, 2020, Malden filed a *Motion for Protective Order Relative to Kariann Murphy’s Personal Notes*. Parents did not file an opposition thereto. In its *Motion*, Malden argued, first, that personal notes were not included in Parents’ discovery requests. Second, Malden argued that pursuant to the Massachusetts Student Record Regulations at 603 CMR 23.04, personal notes of teachers or other school employees that are used, for example, as memory aids, but that are neither released nor accessible

to “authorized school personnel” are not considered part of the student record, and, therefore, are not available to Parents pursuant to the Student Record Regulations. Malden asserts that Dr. Murphy affirmed that she had not shared the notes at issue with anyone, other than the District’s attorney in response to Parents’ allegation that the notes had not been produced in discovery. The record contains no information to the contrary.

## DISCUSSION

The BSEA *Hearing Rules* allow discovery in BSEA proceedings. Rule VI(B)(1) states that “any party may request any other party to produce or make available for inspection or copying any documents or tangible things not privileged, not supplied previously and which are in the possession, custody, or control of the party upon whom the request is made.”<sup>1</sup>

The relevant document requests sought certain “written communication” between Malden personnel and various other individuals or entities, including Parents, the City of Malden and others. Dr. Murphy has affirmed, through counsel, that she did not share her personal notes with any other person. There is nothing in the record suggesting anything to the contrary. As such, Dr. Murphy’s personal notes from the conversation with Parent on or about August 29, 2019, do not constitute “communications” that Parents sought in their *Request for Production of Documents*,<sup>2</sup> and Malden was and is not required to produce them. Moreover, Dr. Murphy’s personal notes are explicitly excluded from the definition of “student records” by 603 CMR 23.04, *supra*, such that Malden has no obligation to produce them pursuant to a student records request.

## ORDER

Based on the foregoing, the Malden Public Schools’ *Motion for a Protective Order* is GRANTED.

By the Hearing Officer,

*/s/ Sara Berman*

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Sara Berman  
Date: October 5, 2020

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<sup>1</sup> See also 801 CMR 1.01(8)(a)-(i)

<sup>2</sup> This case is distinguishable from *In Re: Arlington Public Schools*, BSEA No. 1611465 (Figueroa, 2016), In that case, the student’s teachers, using their personal cell phones, texted information to each other about the student’s educational needs and services. The texts referred to the student by name. The hearing officer ruled that the district was required to produce the text messages to the parents in response to a discovery request for intra-staff communication. She also ruled that the texts were part of the student record. By way of contrast, in the instant case, Dr. Murphy has not shared her personal notes with anyone; therefore, there has been no “communication” subject to discovery by Parents.

