

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

In re: Student v. Springfield Public Schools

BSEA # 2208440

**RULING ON PARENT’S MOTION RELATIVE TO BREACH OF CONFIDENTIALITY
BY DISTRICT’S COUNSEL**

This matter comes before the Hearing Officer on Parent’s *Motion Relative to Breach of Confidentiality by District’s Counsel (Motion)* filed on May 12, 2022. In it, Parent asserts that District’s counsel breached the confidentiality of Parent’s educational advocate and seeks to have the disclosure stricken from the record.

For the reasons articulated below, Parent’s *Motion* is hereby DENIED.

PROCEDURAL HISTORY AND RELEVANT FACTS

The following facts are not in dispute and are taken as true for the purposes of this *Ruling*. These facts may be subject to revision in subsequent proceedings.

1. Student is a fifth-grade student in the Springfield Public Schools (the District). Student’s IEP reflects communication and health disabilities.
2. On April 26, 2022, Parent filed a Request for Hearing with the BSEA alleging, in part, that Student was improperly suspended from school, that “the District violated Parent’s rights by moving forward with [an] IEP meeting without Parent,” and that the District “failed to update and implement Student’s IEP.” Parent sought an order removing a suspension from Student’s record. She also requested compensatory services and “placement in a different school.”
3. On May 10, 2022, Parent filed a *Motion for Sanctions for Resolution Meeting Violations and Denial of Parental Meaningful Participation in the Resolution*.
4. On May 12, 2022, the District filed *Springfield Public Schools’ Opposition to Parent’s Motion for Sanctions, for Resolution Meeting Violations and Denial of Parental Meaningful Participation in the Resolution Meeting*. Paragraph 7 of the District’s opposition references a quote from a ruling by Hearing Officer Berman’s in another pending Springfield matter, and indicates that Parent’s educational advocate (the Advocate) in the instant case is a party to that case.
5. On May 12, Parent filed the instant *Motion* asserting that District’s counsel breached the confidentiality of the Advocate’s child. In it, Parent seeks to have the reference stricken from the record.
6. On May 17, 2022, the District responded, asserting that the record should not be modified since the

“language included in the District’s motion, relative to [the Advocate] being a party to the pending matter assigned to Hearing Officer Berman, did not breach confidentiality. The District’s motion was sent to [the

Advocate], the Hearing Officer and the District. The fact that [the Advocate] states that she was forced to disclose the fact that she is a party to a BSEA case to her client is not persuasive because she could have redacted that line before sending the motion to her client. It was her decision not to do so, not the District's.

Therefore, as no breach of confidentiality occurred, the motion filed by the District should not be modified”

LEGAL STANDARDS

1. Jurisdiction of the Bureau of Special Education

20 U.S.C. § 1415(b)(6) grants the Bureau of Special Education Appeals (BSEA) jurisdiction over timely filed complaints by a parent/guardian or a school district "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child."¹ In Massachusetts, a parent or a school district, "may request mediation and/or a hearing at any time on any matter² concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities."³ A parent of a student with a disability may also request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973...."⁴ However, the BSEA "can only grant relief that is authorized by these statutes and regulations, which generally encompasses orders for changed or additional services, specific placements, additional evaluations, reimbursement for services obtained privately by parents or compensatory services."⁵

2. Student Confidentiality

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) protects the privacy of student education records. Barring specific exceptions, school districts may not disclose "personally identifiable information," which includes, but is not limited to the student's name; the name of the student's parent or other family members; the address of the student or student's family; personal identifier, such as the student's Social Security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty; and, information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the

¹ See 34 C.F.R. §300.507(a)(1).

² Limited exceptions exist that are not here applicable.

³ 603 CMR 28.08(3)(a).

⁴ See 29 U.S.C. 794 (Section 504 of Rehabilitation Act); 34 CFR 104.

⁵ *In Re: Georgetown Pub. Sch.*, BSEA # 1405352 (Berman, 2014).

education record relates.⁶ Similarly, under the IDEA, parental consent must be obtained before personally identifiable information is disclosed to parties, other than participating agencies, unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA.⁷

There is no enforceable private legal right of action under FERPA for violations thereunder.⁸ Rather, families who contend that the federal education record provisions have been violated can file with the "Student Privacy Policy Office" (SPPO),⁹ which is the federal agency under FERPA that is charged with investigating, reviewing, and adjudicating violations of the Act.¹⁰ In Massachusetts, the student record regulations are promulgated to ensure parents' and students' rights of confidentiality, inspection, amendment, and destruction of student records and to assist local school systems in adhering to the law.¹¹ Contrary to the federal educational record laws, however, Massachusetts law provides private appeal procedures for parents and students who believe the state educational record laws have been violated, this through appeal to the superintendent of schools and thereafter the school committee.¹² However, the BSEA is not the appropriate forum in which to assert claims regarding FERPA and Massachusetts student records law.¹³ The BSEA has authority only over matters involving "eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural

⁶ See 34 CFR 99.3 and 34 CFR 300.622(a).

⁷ See 34 CFR 300.622 (a).

⁸ *Gonzaga Univ. v. Doe*, 536 U.S. 273, 287, 122 S. Ct. 2268, 2277, 153 L. Ed. 2d 309 (2002) (internal citations omitted) ("To begin with, the provisions entirely lack the sort of 'rights-creating' language critical to showing the requisite congressional intent to create new rights. ... FERPA's provisions speak only to the Secretary of Education, directing that '[n]o funds shall be made available' to any 'educational agency or institution' which has a prohibited 'policy or practice.' This focus is two steps removed from the interests of individual students and parents and clearly does not confer the sort of '*individual* entitlement' that is enforceable under § 1983"); see 34 CFR 99.60(b)(1).

⁹ The SPPO replaced the Family Policy Compliance Office (FPCO) on January 6, 2019. Although FPCO no longer exists, Letters of Findings and guidance previously issued by FPCO are still valid under current federal laws and provide useful insight into student privacy rules and requirements.

¹⁰ See 34 CFR 99.60(b)(1).

¹¹ See 603 CMR 23.01.

¹² Pursuant to 603 CMR 23.05, the school principal is responsible for maintaining the privacy of student records maintained in her building. In addition, 603 CMR 23.09, in part, provides parents with specific appeal rights as follows:

“(1) In the event that any decision of a principal or his/her designee regarding any of the provisions contained in [the Massachusetts student record regulations] is not satisfactory in whole or in part to the eligible student or parent, they shall have the right of appeal to the superintendent of schools. Request for such appeal shall be in writing to the superintendent of schools.

... (3) In the event that the decision of the superintendent of schools or his/her designee is not satisfactory to the appellant in whole or in part, the appellant shall have the right of appeal to the school committee. Request for such appeal shall be in writing to the chairperson of the school committee.”

¹³ See *In Re: Student v. Taunton Pub. Sch. Dist.*, BSEA # 1304738 (Figuroa 2013) (“The BSEA lacks jurisdiction to order access to a student's record under the Family Educational Rights and Privacy Act (20 U.S.C. s.1232g(f)) or the Public Records law (M.G.L. c.66s.10) or the Student Records Regulations (603 CMR 23.09(1), (2) and (3)"); see also *In re: Student v. Marshfield Pub. Sch.*, BSEA # 2209242 (Kantor Nir, 2022) (finding that the BSEA has jurisdiction over Parent's claim that without access to her child's records, she was unable to make meaningful decisions about the adequacy of her child's programming and that, as a result, the school district had deprived her child of FAPE and prevented meaningful parental participation).

protections of state and federal law for students with disabilities.”¹⁴ Therefore, under both federal and state law, “the only avenue for a hearing officer to consider evidence regarding a breach of confidentiality by a school district employee would be if the parent alleged that such disclosure deprived the student of a FAPE.”¹⁵

APPLICATION OF LEGAL STANDARDS AND CONCLUSION

Here, it is indisputable that the District’s reference to the Advocate in *Springfield Public Schools’ Opposition to Parent’s Motion for Sanctions, for Resolution Meeting Violations and Denial of Parental Meaningful Participation in the Resolution Meeting* (Paragraph 7) disclosed personally identifiable information relative to the Advocate and her child.¹⁶ Nevertheless, in the present matter, Parent has made no allegation that such disclosure has deprived (or would deprive) subject Student in the instant matter of a FAPE.¹⁷ Therefore, in the present matter, there is no relief that I am authorized to grant in response to said disclosure. However, if the Advocate believes that such disclosure has deprived (or would deprive) her own child of a FAPE, then she may so plead before the presiding Hearing Officer in her BSEA matter.

ORDER

Parent’s *Motion Relative to Breach of Confidentiality by District’s Counsel* is hereby DENIED.

By the Hearing Officer:

/s/ Alina Kantor Nir

Dated: June 3, 2022

¹⁴ 603 CMR 28.08(3)(a).

¹⁵ *In Re: Student and Springfield Pub. Sch. (Ruling on Springfield Public Schools’ Motion to Dismiss/Motion for Summary Judgment Relative to Parent’s Amended Hearing Request)*, BSEA # 2203555 (Berman, 2022); see also *In Re: Boston Pub. Sch.*, BSEA # 1900241 (Berman, 2018) (“where procedural safeguards, including parental access to student records, are deemed an essential component of FAPE, such safeguards should be treated as encompassed in ‘the identification, evaluation, education program or educational placement of a child with a disability or the provision of a free and appropriate public education to the child...’. As such, the alleged failure of a school district to implement these safeguards may be the proper subject for a due process hearing, particularly when a parent alleges that such failure has deprived a child of FAPE or prevented meaningful parental participation in the Team process”).

¹⁶ See 34 CFR 99.3.

¹⁷ See, e.g., *In Re: Student and Springfield Pub. Sch.*, BSEA #2203555 (Berman, 2022); *In re: Student v. Marshfield Pub. Sch.*, BSEA # 2209242 (Kantor Nir, 2022).