

**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 Nos. 2203555, 2210887**

Springfield Public Schools

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**RULING ON SPRINGFIELD PUBLIC SCHOOLS' MOTION FOR PROTECTIVE  
ORDER FILED ON JUNE 10, 2022**

**Background**

On June 10, 2022, Parent filed requests for production of certain documents from the Springfield Public Schools ("Springfield," "District," or "School"). On June 19, 2022, Springfield filed the above-entitled *Motion for Protective Order* regarding Parent's discovery request with respect to eight (8) of Parent's document requests.

**Legal Framework**

The legal framework governing discovery in BSEA proceedings has been discussed extensively in a prior ruling in this case and will not be reiterated here, with the exception of the following salient points. First, Rule V of the BSEA *Hearing Rules* allows discovery in BSEA proceedings in the form of requests for production of documents, interrogatories, and, in limited circumstances, depositions.<sup>1</sup> To be subject to discovery, documents must be "not privileged, not supplied previously and...in the possession, custody, or control of the party upon whom the request is made." Rule V(B)(1)

While not directly governing hearings before the BSEA, Rule 26 of both the Federal and Massachusetts Rules of Civil Procedure are used for guidance with respect to the scope of discovery. Pursuant to these Rules, parties may discover "any nonprivileged matter" that is "relevant to any claim or defense, and proportional to the needs of the case, considering the importance of the issues...the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery

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

outweighs its likely benefit. Information...need not be admissible in evidence to be discoverable.” Fed. R. Civ. P., Rule 26(b)(1). See also Mass. R. Civ. P., Rule 26(b)(1), which states that inadmissible evidence may be discovered “if..[it]... appears reasonably calculated to lead to the discovery of admissible evidence.”

The BSEA *Hearing Rules* allow limits on discovery when appropriate. Accordingly, Rule V(C) enables hearing officers to issue protective orders to “protect a party from undue burden, expense, delay, or as otherwise deemed appropriate by the Hearing Officer.”<sup>2</sup> Similarly, Rule 26(c) of both the Federal and Massachusetts Rules of Civil Procedure allow for protective orders “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” *Id.* In addition, a protective order may be appropriate if the material sought is irrelevant to the issues to be heard in the case, is out of proportion to the needs of the case, or if the burden of producing the material outweighs its likely benefit. Rule 26(b), F.R.Civ. P., *supra*.

### **Analysis With Respect to Documents at Issue**

In light of the foregoing legal framework, I will analyze each of the document requests at issue and rule on each as follows:

1. **Request:** “Emails from August 2021 to June 9, 2022 (this excludes emails...I already received.) I am requesting school committee emails be included all pertaining as well to Myself, my son.”

**Response:** The District seeks protection from producing emails between August 2021 through February 18, 2022 because it has already produced these emails, constituting 2,629 Bates stamped documents, in response to a prior request. The District will produce emails for the period from February 19, 2022 through June 10, 2022, using the same search terms that it used in response to prior requests.

The District objects to “school committee emails” because the hearing request does not allege that the Springfield School Committee “engaged in the issues [Parent] has framed for hearing.”

**Ruling:** The *Motion for Protective Order* is **GRANTED** with respect to email correspondence between August 2021 through February 18, 2022 to the extent that such correspondence has already been provided by the District. If it is the District’s position that it has already provided all emails responsive to this request, it shall so certify. The *Motion for Protective Order* is **GRANTED** as to “school committee emails” because such correspondence is not relevant to the limited issues in the instant case and is out of proportion to the needs of the instant case.

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<sup>2</sup> See also 801 CMR 1.01(8)(a) (protective order may be issued “to protect a Party or Person from annoyance, embarrassment, oppression, or undue burden or expense.”).

2. **Request:** “Letter of notice of Dr. Morris’s employment ending.”

**Response:** Such letter does not exist, pertains to a claim concerning Dr. Morris’s alleged breach of confidentiality, which claim has previously been dismissed, and is a personnel record that is not subject to production in BSEA matters.

**Ruling:** The *Motion for Protective Order* is **GRANTED** as to the request for the above-referenced letter because such letter, if it exists, is not relevant to any claim currently subject to hearing in this matter. Because the *Motion* is granted on grounds of lack of relevance of the document sought, I do not reach the issue of discoverability of information from personnel files maintained by the District.

3. **Request:** “Emails or notes pertaining to MCAS and/or the portfolio.”

**Response:** As stated in Response No. 1, Springfield will provide emails from February 19, 2022 through June 10, 2022. The District objects to production of “notes” as exempt from public disclosure, for employees’ personal use only, and not relevant to the issues for hearing.

**Ruling:** The *Motion for Protective Order* is **DENIED AS MOOT** with respect to emails dating from February 19, 2022, through June 10, 2022 because Springfield has agreed to provide these documents to Parent. Upon providing these emails to Parent, Springfield shall so certify. The Motion is **GRANTED** as to “notes” that are maintained by employees for personal use only, “kept by the employee merely to assist them,” are not shared with anyone in the District, are not maintained as a part of the District’s files, and are not maintained within Student’s educational records. See MGL c. 4, §26(e).

4. **Request:** “Policy for Reasonable Accommodations.”

**Response:** This request seems to relate to Parent’s claim relative to her use of a “memory aid” recording device in BSEA No. 2203555, and is not relevant to her claims in BSEA No. 2210887.

**Ruling:** BSEA Nos. 2203555 and 2210887 have been consolidated via a Ruling issued on September 22, 2022, such that the district’s policy for reasonable accommodations may be relevant to Parent’s claims. As such, the *Motion for Protective Order* is **DENIED** and Springfield is directed to provide Parent with the responsive documents unless it already has done so, and shall so certify upon providing the documents.

5. **Request:** “All notes from the exit meeting written by Alisia St. Florian, Melinda Phelps, Dr. Morris, and Laurie Malandrino.”

**Response:** The exit meeting of March 25, 2022 that is referred to in the above request is addressed in BSEA No. 2203555 and is not an issue in BSEA No. 2210887. Further, notes taken by Attorneys St. Florian and Phelps are protected from disclosure as attorney work product and are not subject to discovery.

**Ruling:** The exit meeting referred to above is an issue in the consolidated matter, BSEA Nos. 2208355 and 2210887. However, the *Motion for Protective Order* is **GRANTED** as to the notes of Attorneys St. Florian and Phelps taken during the exit meeting of March 25, 2022 because the notes of Springfield’s counsel are protected from disclosure as attorney work product,<sup>3</sup> provided that such notes are not made a part of Student’s educational record, in which case they must be provided to Parent. The *Motion for Protective Order* is **GRANTED** as to the notes taken by Laurie Malandrino to the extent that such notes are personal in nature, kept by Ms. Malandrino for her own use and neither shared with anyone else nor placed in Student’s educational record. If such notes are shared with other District personnel or placed in Student’s educational record, they must be provided to Parent.

6. **Request:** “Copies of all complaints filed in the last two years against Springfield for denial of reasonable accommodations filed by staff, parents, and/or students.”

**Response:** Accommodations at the exit meeting of March 25, 2022 are not an issue in BSEA No. 2210887. Further, any such complaints are protected from disclosure by FERPA or 603 CMR 23.

**Ruling:** Springfield’s *Motion for Protective Order* is **GRANTED** as to the above-referenced documents. Whether Springfield denied Parent accommodations for her disabilities at the exit meeting held on March 25, 2022 is at issue in the above-numbered consolidated matter, but solely with respect to Parent. Any complaints about failure to accommodate disabilities that persons other than Parent may have initiated against the

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<sup>3</sup> Rule 26(b)(3)(A) of the Federal Rules of Civil Procedure generally protects “work product” from discovery, which may include “documents or tangible things that are prepared in anticipation of litigation,,by or for a party or its representative.” An exception is made “if the party shows it has substantial need for the materials to prepare its case and cannot, without hardship, obtain their substantial equivalent by other means. F. Rules Civ. P. 26(b)(3)(A)(ii). The corresponding state rule, Mass. Rules Civ. P. 26(b)(3) contains nearly identical language. The meeting at issue took place during the pendency of litigation of BSEA No. 2203555, subsequently consolidated with BSEA No. 2210887, and as such, counsel’s notes can reasonably be viewed as being prepared in anticipation of litigation.

District have no relevance to whether Springfield improperly denied such accommodations to Parent.

7. **Request:** “Copy of hiring contract between MHTL and Springfield Public Schools.”

**Response:** The contract between Springfield and the law firm of Murphy, Hesse, Toomey and Lehane has no bearing on the issues for hearing.

**Ruling:** There is no nexus between the issues framed for hearing and the contract between Springfield and Murphy, Hesse, Toomey & Lehane. As such, the Motion for a Protective Order is **GRANTED**.

8. **Request:** Copies of School Committee executive session minutes and notes between August 2021 to June 2022.

**Response:** The Springfield School Committee is not mentioned in Parent’s hearing request, and has no role or oversight in the issues raised by Parent. In addition, the request is overbroad, as it would include, for example, notes regarding completely irrelevant matters such as collective bargaining.

**Ruling:** Springfield’s Motion for Protective order is GRANTED as to this discovery request for reasons stated by the District.

### **CONCLUSION AND ORDER**

The Springfield Public Schools’ *Motion for Protective Order* is DENIED in part and GRANTED in part as follows:

Request No. 1: **GRANTED**.

Request No. 2: **GRANTED**

Request No. 3: **DENIED AS MOOT** as to emails between February 19, 2022 and June 10, 2022. **GRANTED** as to personal notes maintained by employees.

Request No. 4: **DENIED**. Springfield shall immediately provide Parent with written policies concerning accommodations for persons with disabilities.

Request No. 5: **GRANTED** subject to caveats stated in Ruling on Request No. 5, above.

Request No. 6: **GRANTED**.

Request No. 7: **GRANTED**.

Request No. 8: **GRANTED.**

By the Hearing Officer,

/s/ *Sara Berman*

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Sara Berman

Dated: November 1, 2022