

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

In Re: Student & Boston Public Schools

BSEA No. 2301267

**RULING ON BOSTON PUBLIC SCHOOLS' OBJECTIONS
TO CERTAIN OF PARENT'S INTERROGATORIES**

This matter comes before the Hearing Officer on *Boston Public Schools' Objections to Parent's Discovery Requests* filed on December 27, 2022 (*Objection*) seeking a protective Order for certain Interrogatories filed by Parent¹. On January 3, 2023, Parent filed *Parent's Response to Boston Public Schools' Objections to Parent's Discovery Requests (Response)*, wherein she withdrew entirely Interrogatory 11, withdrew a subpart of Interrogatory 22 and modified Interrogatory 5, in light of Boston Public Schools' (Boston or District) objection. Thereafter, on January 5, 2023, the Parties participated in a Conference Call, during which Parent agreed to Boston's requested modifications for Interrogatories 8 and 10, thereby resolving the objection to these Interrogatories. Parent also agreed to further modify Interrogatory 5, and to modify Interrogatory 13, however Boston maintains its objection to these Interrogatories, as modified. As a result, the Parties confirmed that the Interrogatories remaining in dispute for this *Ruling* are: Interrogatories 5 (as fully modified), 6, 9, 12, 13 (as modified), 15, 16, 17, 22, 23 and 25². For the reasons articulated below, Boston's *Objection* is **ALLOWED in part and DENIED in part**. A protective Order is issued allowing Boston to refrain from answering Interrogatories 9, 12, 22, 23 and 25 in their entirety, to refrain from answering certain portions of Interrogatories 16 and 17, and providing for an *in camera* review of Boston's answer to Interrogatory 13, in accordance with this *Ruling*.

RELEVANT PROCEDURAL HISTORY

The relevant procedural history was previously detailed in my November 7, 2023 *Ruling on Boston Public Schools' Objections To Certain Of Parent's Requests For Production Of Documents*, ("November 2022 Ruling"). However, by way of summary, on August 5, 2022, Parent filed a *Request for Hearing* alleging Boston had not provided Student, an English Learner (EL) with a disability whose native language is Toishanese, with a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Act (IDEA), and the Massachusetts special education laws, and resulting in unlawful discrimination based on

¹ The *Objection* challenges certain Interrogatories contained within *Parent's First Set of Interrogatories* served on November 22, 2022, consisting of Interrogatory Numbers 1-7 as well as within *Parent's Second Set of Interrogatories* served on December 16, 2022, consisting of Interrogatory Numbers 8-25. Collectively, I refer to these documents as *Interrogatories* in this *Ruling*.

² Boston also objects to Interrogatories 14-25 on procedural grounds as being beyond the twenty-five (25) Interrogatories a party is allowed to serve on another party pursuant to *Rule V(B)(2)* of the *Hearing Rules for Special Education Appeals*, absent Hearing Officer approval. Although Boston also has substantive grounds for objection to Interrogatories 15-17, 22, 23 and 25, it has no substantive objection to Interrogatories 14, 18, 19, 20 or 21. As discussed further below, I decline to issue a protective Order for Interrogatories 14, 18, 19, 20 or 21, as the only objection Boston raises to these interrogatories is procedural. Further, to the extent that Interrogatories 14, 18, 19, 20 or 21 do exceed the twenty-five Interrogatory limit, I approve such extension.

Student's disability in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA). Parent challenged the appropriateness of Boston's evaluations of Student, Boston's failure to consider Student's dual language and disability status in issuing IEPs, Boston's refusal to provide Student with special education and related services in his native language, and Boston's failure to provide Student with speech-language services by a bilingual (Toishanese-English) educator to address his diagnosis of childhood apraxia of speech. Parent also claimed Boston denied Student access to nondisabled EL students with the same English language development (ELD) level as Student and improperly failed to provide him with an AAC device programmed in both his native language and English.

At all times prior to the *Hearing Request*, Student attended a substantially separate program at one of Boston's elementary schools (Elementary School). Student currently attends a substantially separate program at one of Boston's middle schools by virtue of his "stay put" IEP; however, Boston has proposed a different substantially separate program in another middle school.

DISPUTED REQUESTS AND POSITION OF THE PARTIES

This discovery dispute involves eleven of the twenty-five numbered *Interrogatories* Parent served on Boston. Boston raises a general procedural challenge to the *Interrogatories*, in that Boston contends that they actually consist of more than the twenty-five total number of *Interrogatories* that a party is allowed to serve on another party without Hearing Officer approval under the provisions of *Rule V(B)(2)* of the *Hearing Rules for Special Education Appeals*. Boston also substantively challenges each of the eleven disputed *Interrogatories*, as being overly broad, burdensome, irrelevant, immaterial, seeking information that is not reasonably calculated to lead to the discovery of admissible evidence and/or seeking confidential student record information of other students for which consent has not been authorized³.

Parent disputes Boston's objections and submits that, in general, her *Interrogatories*, as modified, do not consist of more than the twenty-five total number allowed by *Rule V(B)(2)*, as all subparts are "logical extensions of the basic interrogatory" and thus must not be treated as a

³ Additionally, Boston argues *Interrogatories* 13, 22 and 23 seek information previously prohibited from being produced in the *November 2022 Ruling*, and Parent's request for this same information by way of an interrogatory is "clearly in bad faith, frivolous, unreasonable, and intended for improper purpose". Parent, noting its disagreement with Boston's reading of the *November 2022 Ruling*, contends that these *Interrogatories* differ from her prior discovery requests as they seek information in the aggregate, only, via a written response, rather than disaggregated documentary information, as had been previously requested. According to Parent, the requested aggregate information does not seek nor should it result in the provision of any personally identifiable information, as that term is defined in the Family Educational Rights and Privacy Act (FERPA). Thus it does not implicate the privilege issues that were the basis, in the *November, 2022 Ruling*, for prohibiting disclosure of the prior requested documents. I agree with Parent both as to Boston's misreading of the *November 2022 Ruling*, and her contention that these interrogatories do not seek protected educational records of any student, and thus are not privileged, and can be provided without including any personally identifiable information of any students. See 34 CFR 99.32(b) ("[A] ... party that has received education records or information from education records in this part, may release the records or information without the consent required by §99.30 after the removal of all personally identifiable information ..."). As such, I do not find these *Interrogatories* to have been sought improperly, and only consider the other substantive challenges by Boston to these *Interrogatories* in this *Ruling*.

separate interrogatory. Parent also argues that each of the disputed *Interrogatories* seek information that is relevant to the issues in this matter or is reasonably calculated to lead to the discovery of admissible evidence of one or more of these issues. Parent further argues that she is not seeking any information that is privileged or would require the provision of confidential student record information for which parental consent would otherwise be needed. Finally, Parent challenges Boston’s argument that any interrogatory is “overly broad” or “unduly burdensome” as Boston does not identify the actual burden involved with answering any of the interrogatories it is objecting to on these grounds.

LEGAL STANDARDS⁴

BSEA *Hearing Rule V* governs the discovery process before the BSEA. Specifically, *Rule V(B)(1)* provides all parties the opportunity to request disclosure of “documents or tangible things” from another party. In addressing discovery issues, the BSEA is guided by the Massachusetts and Federal Rules of Civil Procedure and the *Formal Standard Adjudicatory Rules of Practice and Procedure*, to the extent they are not modified by the BSEA *Hearing Rules*⁵. Consistent with Rule 26(b)(1) of the Massachusetts Rules of Civil Procedure:

“[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party...It is not ground for objection that the information sought will be inadmissible at the trial if...[it]...appears reasonably calculated to lead to the discovery of admissible evidence.”

Further, *Rule V(B)(2)* provides for a party to serve another party with interrogatories seeking to discover “...relevant, not privileged, information not supplied previously through a voluntary exchange of information.” See 801 CMR 1.01(8)(g). The total number of interrogatories allowed to be served under this *Rule* is limited to twenty-five, however, absent Hearing Officer approval for more. To this end, according to *Rule V(B)(2)*, “... subparts of a basic interrogatory that are logical extensions of the basic interrogatory and seek only to obtain specified additional particularized information with respect to the basic interrogatory shall not be counted separately from the basic interrogatory⁶.”

In addition, the Federal Rules of Civil Procedure require that discovery requests be “proportional to the needs of the case”⁷. Furthermore, the information sought “need not be admissible in evidence to be discoverable”⁸. Following the guidance from the referenced Rules, *supra*, the

⁴ No further published legal decisions have been issued since the *November 2022 Ruling* addressing discovery disputes. Since this is the second *Ruling* in this matter about discovery disputes, those statements of law contained within the Scope of Discovery subpart of the Legal Standards section of the *November 2022 Ruling* are set forth herein, verbatim, supplemented only with further law specific to interrogatory discovery.

⁵ See “Scope of Rules” section that exists as a preamble to the BSEA *Hearing Rules*.

⁶ See 801 CMR 1.01(8)(g) calculating an interrogatory as being inclusive of its “subsidiary or incidental questions”.

⁷ Federal Rule of Civil Procedure Rule 26(b)(1).

⁸ *Id.*

BSEA has interpreted discovery provisions liberally⁹. However, discovery requests must encompass relevant information related to the claims and defenses involved in the underlying matter¹⁰. Additionally, federal and state privacy laws preclude discovery of privileged information, including but not limited to education records containing personally identifiable information without obtaining the parent or guardian’s prior informed consent¹¹.

In considering the appropriateness of requested discovery, Hearing Officers balance the need for and relevance of the requested information against whether the disclosure sought is intrusive, irrelevant, overly burdensome or harassing¹². Hearing Officers must also consider whether the discovery request is proportional to the needs of the case. If a determination is made that the scope of discovery should be limited, a Hearing Officer may also issue a protective order for the purpose of protecting “a party from undue burden, expense, delay, or as otherwise deemed appropriate by the Hearing Officer”¹³.

⁹ *In Re: Zebulon & Quincy Public Schools*, BSEA No. 16-00059, 21 MSER 206 (Byrne, 2015) (“Liberal discovery practices are intended to uncover information that may shed light on, support, detract, defuse or alter those facts and arguments the parties hold at the beginning of litigation.”); see *In Re: Student v. Springfield Public Schools*, BSEA No. 2208440 (Kantor Nir, 2022); *In Re: Andover Public Schools*, BSEA No. 1706174, 23 MSER 55 (Figuroa, 2017) (allowing a Parent to discover documents and information relating to children “with whom the Student may be grouped,” as this information was directly relevant to whether the needs of Student’s peers in the proposed program were similar enough to provide the student a FAPE); *In Re: Mattapoisett Public Schools*, BSEA No. 06-6153, 13 MSER 22 (Crane, 2006).

¹⁰ See *In Re: Logan & Grafton Public Schools*, BSEA No. 15-06275, 21 MSER 131 (Reichbach, 2015) (denying discovery of test protocols, general education lesson plans and syllabi and individualized trimester assessments for grades kindergarten, first grade and second grade, and a teacher’s gradebook as, although potentially discoverable in other matters, they were not deemed relevant to the underlying claims in that matter); see also *Artuso v. Vertex Pharmaceuticals, Inc.*, 637 F.3d 1, 8 (1st Cir. 2011) (upholding a dismissal of the matter despite Plaintiff’s suggestion that discovery would provide evidence of the legitimacy of the claim, in part because “a plaintiff whose complaint does not state an actionable claim has no license to embark on a fishing expedition in an effort to discover a cause of action” (internal citations omitted).)

¹¹ Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. § 1232(g)(b)(1); M.G.L. c. 71, § 34F; 34 CFR § 99.30(a) (requiring that, except in specific situations, parental consent be obtained before personally identifiable information is disclosed to third parties”); 603 CMR 23.07(4); see 20 U.S.C. § 1232(g)(a)(4)(A) (defining as educational records “those records, files, documents, and other materials which – (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution”); see also 20 USC 1232(g)(a)(1)(A) (“If any material or document in the education record of a student includes information on more than one student, the parents of one such student shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material”).

¹² See e.g., *In Re: Flavio and Beverly Public Schools*, BSEA No. 1810763, 24 MSER 156 (Byrne, 2018) (denying the school’s motion for a protective order of redacted peer IEPs where the parents sought highly relevant information and carefully limited the request in time, nature, and scope and the school did not propose less intrusive methods of obtaining identical information); *In Re: Zebulon and Quincy Public Schools*, (“Information that is, or may be, relevant to any aspect of a Student’s appeal, no matter how tangential, should be shared absent a reasonable showing of privilege, harassment, intrusiveness or unequivocal irrelevance”); *In Re: Mattapoisett Public Schools*, (although the district concern that redacted IEPs “may possibly be identifiable to a particular student” was appropriately raised, disclosure was not precluded so long as additional efforts were in place to minimize the possibility of a breach of confidentiality.)

¹³ BSEA *Hearing Rule VI(C)*. 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”).

In some cases, to fully safeguard against the risk of breaching confidentiality, especially where potential exists for a chilling effect, Hearing Officers will review the requested information *in camera* to ensure that only discoverable information, even that for which a protective order is ultimately issued, is released¹⁴. *In camera* review is the “proper procedure to be utilized in making determinations of this nature” in situations where highly sensitive and confidential information is involved¹⁵. As a threshold question, prior to utilizing *in camera* review, a Hearing Officer should first determine whether the requested evidence is relevant¹⁶. If so, *in camera* review of the requested documents will allow the Hearing Officer to decide if the “interests of justice” require disclosure, for those cases where this statutory standard applies¹⁷, as well as whether anything should be redacted from the responsive records prior to their production¹⁸.

DISCUSSION

Although the parties have appropriately collaborated to resolve their discovery disputes regarding the *Interrogatories*, eleven of them remain under objection. Upon consideration of the applicable legal standards, and the arguments offered by the parties, Boston’s *Objection* is **DENIED** as to Interrogatories 5 (as modified), 6 and 15, **ALLOWED** as to Interrogatories 9, 12, 22, 23 and 25, and **ALLOWED in part** and **DENIED in part** as to Interrogatories 16 and 17. With regard to Interrogatory 13 (as modified), Boston’s *Objection* is **DENIED**; however, Boston is ordered to produce the requested information to me for an *in camera* review first. My reasoning follows.

1. Interrogatories Boston Must Answer in their Entirety.

Interrogatory 5 (as modified)¹⁹, seeks information in the aggregate relating to certain elementary, English language students with disabilities (ELSWDs) who also were assigned to participate in

¹⁴ *In Re: Scituate Public Schools*, BSEA No. 1702015, 23 MSER 102 (Figueroa, 2017) (*in camera* review will occur upon parental request of any requested “psychologist/clinical social worker/psychiatric notes and hospitalization records”); *Touchstone Public Schools and Salvador*, BSEA No. 1507990, 21 MSER 137 (Byrne, 2015) (ordering *in camera* review of any DCF, DDS and hospital records requested which Parent challenged as irrelevant or in need of redaction prior to their introduction into evidence at the due process hearing); *In Re: Wilmington Public Schools*, BSEA No. 97-3289, 4 MSER 60 (Erlichman, 1998) (Ordering *in camera* review of records implicating the social worker-client statutory privilege so as to apply the balancing test applicable to one of the exceptions to this privilege and to also “prevent unwarranted ‘fishing expeditions’”).

¹⁵ *In Re: Wilmington Public Schools*; see *In Re: Student and Nashoba Regional School District*, BSEA No. 03-0860, 10 MSER 98 (Crane, 2003) (*In camera* review may also be appropriate for broad discovery requests of confidential information after first determining that Nashoba is not simply seeking ‘an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information would enable’ Nashoba to defend its [case]”).

¹⁶ *In Re: Nashoba Regional School District* quoting *People v. Gissendanner*, 48 N.Y.2d 543, 549 (1979); see *In Re: Albert and Boston Public Schools*, BSEA No. 06-6508, 12 MSER 221 (Crane, 2007) (recognizing that an “initial showing of likely relevance of the privileged documents prior to disclosure to the Hearing Officer must occur for an *in camera* review” (citations omitted)); *In Re: Plymouth Public Schools & Mass. Dept. of Mental Health*, BSEA No. 06-2584, 12 MSER 33 (Crane, 2006) (ordering *in camera* review of psychotherapist and social worker records after a preliminary finding of relevancy, so that privileges are not “pierced unnecessarily”, so as to determine if “in the interests of justice” any records were within the statutory exception for disclosure (citations omitted).)

¹⁷ *In Re: Albert and Boston Public Schools*; *In Re: Plymouth Public Schools & Mass. Dept. of Mental Health*,

¹⁸ *In Re: Touchstone Public Schools*; *In Re: Plymouth Public Schools & Mass. Dept. of Mental Health*.

¹⁹ Parent agreed to insert “elementary” after “For all” and before “students”, and to withdraw subpart (c).

the ACCESS-Alt for certain school years. Boston objects to responding to this Interrogatory as it requests information on “numerous other students who are not parties to this matter” (emphasis in original). Boston also argues that responding to this interrogatory is excessively burdensome and time consuming. Parent submits that the information in this interrogatory could support or lead to the discovery of evidence associated with her claims that Boston improperly predetermined certain educational decisions for Student, including his participation in alternative standardized assessments, based upon his disability, in violation of Section 504 and the IDEA. Specifically, Parent submits that a response to this interrogatory could lead to the discovery of admissible evidence relating to her contention that the decision for Student to take the ACCESS-Alt was based on a written or unwritten policy or practice of Boston related to its assigning ELSWDs, including Student, to take the ACCESS-Alt, regardless of Student’s individual needs.

As I previously analyzed in detail in the *November 2022 Ruling*, I consider information about Elementary ELSWDs to be relevant and within the scope of discovery, with regard to Parent’s claims that Boston inappropriately predetermined certain aspects of Student’s special education program and services, in contravention of both Section 504 and the IDEA’s procedural requirements²⁰. Although in the *November 2022 Ruling*, I ultimately did not Order Boston to produce some of the requested ELSWD’s documents sought by Parent, this prohibition was based upon my conclusion that the requested documents (seeking disaggregated information of ELSWDs) could result in the production of highly sensitive, confidential student record information of a substantial number of immigrant students²¹, which outweighed Parent’s potential benefits to receiving the requested information. I also noted that alternative discovery methods existed for Parent to obtain information related to her Section 504 discrimination and IDEA predetermination claims. Interrogatories would be one such alternative method.

Since Interrogatory 5 (as modified) only requests information in the aggregate, it will not require Boston to provide any student-specific or otherwise confidential student record information of

²⁰ Violations of the IDEA’s procedural requirements occur when a school district is found to have pre-determined the program, services, or placement outside the Team process. *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014); *H.B. v. Las Virgenes Unified School Dist.*, 239 Fed. Appx., 342, 344-346 (9th Cir. 2007) *aff’d*; *Berry ex rel. Berry v. Las Virgenes Unified Sch. Dist.*, 370 F. App’x 843 (9th Cir. 2010); *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 857-58 (6th Cir. 2004). However, where meaningful communications have occurred between the school and a parent at the Team meeting(s), and the Team has properly considered alternatives to the District’s proposal, improper pre-determination has not been found even where district staff communicated outside the Team meeting, the Team proposal was contrary to a parent’s request, or the District attended the Team meeting with draft documents identifying placements or services. *G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942, 947 (1st Cir. 1991); see *Nack ex rel. Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 610 (6th Cir. 2006) (“... predetermination is not synonymous with preparation”); *N.L. v. Knox Cnty. Schs.*, 315 F.3d 688, 694–95 (6th Cir. 2003) (finding no predetermination where representatives from the school district “recognized that they were to come to the meeting with suggestions and open minds, not a required course of action”); *C.D. by & through M.D. v. Natick Pub. Sch. Dist.*, No. CV 15-13617-FDS, 2017 WL 3122654, at *17 (D. Mass. July 21, 2017), *aff’d*, 924 F.3d 621 (1st Cir. 2019); *Hazen v. South Kingstown Sch. Dept.*, 2010 WL 5558912, *7-*11 (Dist. R.I., 2010) *adopted by sub nom.*, 2011 WL 63499 (Dist. R.I., 2011); *In Re: Student & Mendon-Upton Regional School District*, BSEA No. 2203125, 28 MSER 40 (Mitchell, 2022); *In Re: Haverhill Public Schools*, BSEA No. 20-06314, 26 MSER 176 (Berman, 2020).

²¹ See *Attorney General Advisory: Equal Access to Public Education for All Students Irrespective of Immigration Status*, Updated April 2022.

any student²². Moreover, Parent’s modifications to Interrogatory 5 reduces the amount of information that Boston will need to provide, thereby addressing Boston’s concerns as to burden and breadth. For this reason, Boston’s *Objection* to Interrogatory 5 (as modified) is **DENIED**.

Interrogatory 6 requests information related to the number of positions that Boston has posted, interviewed and hired for qualified bilingual-Toisanese staff in specified positions during certain school years. Boston contends, without further explanation, that this Interrogatory requests information “not material to the matter at issue” and submits that providing a response would be “unreasonably burdensome”. I disagree that the information requested is immaterial. Rather, I find discovery of outreach efforts by Boston to hire bilingual-Toisanese staff who, if hired, may have been available or assigned to provide special education or related services or supports to Student during the school years, to be particularly relevant to the issues in this matter. While admissibility is not required for discovery requests to be appropriate, evidence of these recruitment efforts and results by Boston would in fact be admissible in the Hearing in this matter²³. Moreover, I do not find a response to this Interrogatory to be unduly burdensome for Boston to provide, particularly as Boston fails to explain how such a response would be so unduly burdensome. Boston’s *Objection* to Interrogatory 6, therefore, is also **DENIED**.

Finally, Interrogatory 15 seeks to have Boston explain, generally, the difference between a student receiving direct and embedded ESL services, and whether or not and by whom, with identification of the provider’s certification, Student received direct versus embedded ESL services in his substantially separate special education classroom, if at all, during three school years, and how this was tracked. Boston substantively objects to responding to this Interrogatory on the grounds that it requests broad information unrelated to Student, and that such a response would be excessively burdensome and time consuming²⁴. I again disagree with Boston’s position. I do not find that responding to this Interrogatory would be unduly burdensome or time consuming, given that it is limited in time and is specific to Student’s receipt or lack of ESL services in his substantially separate classroom. Additionally, other than asking for a general explanation about the difference in how direct versus imbedded services are provided by Boston, I interpret Interrogatory 15 only to request information specific to Student, and Boston shall answer this Interrogatory consistent with this limitation. Boston’s *Objection* to Interrogatory 15, is also **DENIED**, and Boston shall answer this Interrogatory consistent with this *Ruling*.

2. Interrogatories Boston Does Not Have to Answer in Their Entirety.

Interrogatories 9 and 12 pertain to certain published reports (two Superintendent Circulars from September, 2021 and September, 2022 and an undated report about Boston from the Council of Great City Schools). Interrogatory 9 questions whether a change in language between the two Superintendent Circulars represents a policy change by Boston, and how the language of each circular applied generally to ELSWDs. Interrogatory, 12, asks Boston to identify the author of a

²² During the Parties’ January 5, 2023, Conference Call, Parent confirmed that she is only seeking to have total numbers of students provided in any response Boston submits, student names, identification numbers and the like are not being requested in the Interrogatory. Additionally, Parent is not looking for Boston to provide the specific disability of any student in its response, rather to just provide total numbers under each of the IDEA’s disability categories. Boston’s response to Interrogatory 5 (as modified) will adhere to these agreements by Parent.

²³ Federal Rule of Civil Procedure Rule 26(b)(1).

²⁴ Boston also objects to this Interrogatory on procedural grounds. The procedural objection is addressed below.

specific statement in the Council of Great City Schools report, and to confirm Boston's general position regarding statements contained in the report and its legal basis for this position. Neither Interrogatory mentions Student at all. Other than the fact that Student is enrolled in Boston, and is identified as an ELSWD, I do not find either interrogatory to be connected to Student, his special education needs, or otherwise relevant to the claims in this matter. As such, Boston's *Objection* to these Interrogatories is **ALLOWED**.

Boston also objects to Interrogatories 22, 23 and 25 on both procedural and substantive grounds. As to Boston's procedural objection, in general, I agree that Parent's *Interrogatories* as a whole, consist of substantially more than the twenty-five interrogatory limitation allowed by the *Hearing Rules for Special Education Appeals*, absent Hearing Officer approval. No such approval was sought or secured prior to issuance of this *Ruling*. While the *Interrogatories* are numbered 1 to 25, upon review, I find that not all of the subparts of each basic interrogatory are in fact "logical extensions" or "seek only to obtain specified additional particularized information" about the basic interrogatory. Thus, certain subparts of each of the numbered *Interrogatories* must be counted separately from the basic interrogatory. *Rule V(B)(2)*.

Boston's procedural challenge applies to Interrogatories numbered 14 to 25, only, not to the first thirteen Interrogatories. Boston does not object, substantively, to six additional Interrogatories, specifically Interrogatories 14, 18-21 and 24, though, and only raises substantive objections to Interrogatories 22, 23 and 25. While, I conclude, contrary to Boston's contention, that Parent reaches the twenty-five limitation threshold after Interrogatory 14, it is not necessary for me to determine exactly where in the *Interrogatories* this threshold is reached. After applying a liberal reading of Interrogatories 1 to 21, as I am required to do²⁵, I find the threshold is clearly reached prior to Interrogatory 22. Boston's *Objection* to Interrogatories 22, 23 and 25 is thus **ALLOWED**, on procedural grounds, as these Interrogatories exceed the total number of interrogatories allowed by *Rule V(B)(2)*. As Boston's procedural objection is allowed, it is unnecessary for me to address Boston's substantive objections to them.

3. Interrogatories To Which Boston Must Provide a Partial Answer.

Interrogatory 16 consists of three sentences. The first two sentences request Boston to identify "any evidence" as to Boston's (specifically Student's IEP Team, Student's Elementary School and Boston Public Schools by providing oversight) consideration of Student's needs in development and implementation of his IEPs and whether there was a "possible match" for Student with a bilingual (Toisanese) special educator or speech-language pathologist, "and/or a plan for staffing [Student's] demonstrated needs". The specific type of "evidence" sought is specified to include "any specific documents, research articles, publications, presentations or other information reviewed by his IEP Team". The third sentence of this Interrogatory requests Boston to identify any training sessions and materials provided to support Student's Elementary School staff to assist them in identifying "the language needs of ELSWDs (e.g., childhood apraxia of speech)".

²⁵ *In Re: Zebulon* BSEA No. 16-00059; see *In Re: Student v. Springfield Public Schools*, BSEA No. 2208440; *In Re: Andover Public Schools*, BSEA No. 1706174; *In Re: Mattapoisett Public Schools*, BSEA No. 06-6153. As noted, *supra*, to the extent that Interrogatories 14, 18-21 and 24 do exceed the twenty-five limit threshold allowed by *Rule V(B)(2)*, I allow an extension of this threshold and Boston shall provide responses to these Interrogatories.

Boston argues substantively that responding to this entire Interrogatory would be excessively burdensome and time consuming, and that information on training sessions and materials given to support staff is irrelevant to the matter at issue²⁶. Parent advises, in her *Response*, that this Interrogatory is relevant to her claims that Student's language-based needs as an EL with a severe communication disorder were not properly considered by qualified personnel in developing and implementing Student's IEP and in Student's receipt of a FAPE.

After consideration of Boston's arguments and Parent's response thereto, I **ALLOW in part** and **DENY in part** Boston's *Objection*. I allow Boston's *Objection* as to the first two sentences as I find them to be overly broad, irrelevant to the claims Parent contends the Interrogatory relates to, and beyond the scope of discovery. The sentences request Boston to identify "any evidence" while listing a broad range of documentary materials that "any evidence" applies to, using vague and confusing language. Additionally, as some of the information responsive to these sentences of the Interrogatory has already been produced through the requisite voluntary exchange of information between the Parties, Boston's production of Student's entire school record to Parent, or Boston's responses to Parent's *Request for Production of Documents*, use of an interrogatory to obtain this information again is impermissible²⁷.

The third sentence of Interrogatory 16, however, is different²⁸. To the extent that the third sentence seeks information specific to Student, it is relevant to Parent's claims in this matter, as she argues in her *Response*. Consistent with the liberal discovery practices of the BSEA, information on the training and materials that Student's Elementary School staff were given to assist in properly identifying the language needs of ELSWD students having Student's disability, could clearly "shed light on, support, detract, defuse or alter the facts and arguments" of the Parties in this matter²⁹. Thus, Boston shall Answer the third sentence of Interrogatory 16, only, limited to providing information about Student's disability of childhood apraxia of speech.

In the same way, Boston's objection to Interrogatory 17 is **ALLOWED in part** and **DENIED in part**. Interrogatory 17 asks what actions were taken by Student's Elementary School, the middle school Student attends, and the middle school proposed for Student towards developing a comprehensive assessment system relating to eligibility determinations for ELs and ELSWD's continuing educational needs and any training sessions convened by these schools since March 2020 for these purposes. It also asks Boston to identify "any and all instructions and training materials tailored to the assessment of English learners with disabilities and provided to evaluators who assessed [Student] during the 2019-20, 2020-21, 2021-22 and 2022-23 school years"³⁰. Boston substantively objects to this Interrogatory on the same grounds it objected to Interrogatory 16³¹. Parent's *Response* advises that this Interrogatory is relevant to two of her

²⁶ Boston also submits a procedural objection to this Interrogatory, addressed *supra*.

²⁷ *Id.*; see *Rule V(B)(2)* (authorizing interrogatories of "... information not supplied previously through a voluntary exchange of information").

²⁸ I find this third sentence to stand alone as its own interrogatory, since it is distinctly different from the first two sentences, and not a "subpart of the basic interrogatory".

²⁹ *In Re: Zebulon & Quincy Public Schools*, BSEA No. 16-00059.

³⁰ Parent clarified that with regard to reference to the 2019-20 school year, she is only looking for information after March 2020.

³¹ Boston also submits a procedural objection to this Interrogatory, addressed *supra*.

claims, specifically that Student was not properly evaluated in his native language or receive appropriate special education and related services in his native language.

Upon review of this Interrogatory, I find that only the portion I have quoted verbatim above is specific to Student and the staff who worked with him, and therefore relevant. The instructions and training materials provided to the evaluators who assessed Student during the years mentioned, is relevant to Parent's claims and specific to Student. Consistent with my analysis of Interrogatory 16, the general steps taken by Boston to develop a comprehensive assessment system for both ELs and ELSWDs at certain schools (other than that these are the schools Student has attended, currently attends, or is proposed to attend), and the training associated with the development of this system is irrelevant to the special education and related services that Student actually received. As such, Boston shall provide an answer to the language quoted, *supra*, from Interrogatory 17, only, for the identified school years, since March 2020.

4. Interrogatory 13.

Interrogatory 13 asks Boston to provide primarily aggregate data relating to students with disabilities, ELSWDs and the MCAS-Alt assessment³². The only disaggregated data sought is the responses to the last two bullets, separated by native language. As with Interrogatory 5 (as modified), I find the information requested in Interrogatory 13 (as modified) to be relevant to Parent's claims of discrimination based on Student's disability in violation of Section 504 and improper predetermination in contravention of IDEA's requirements. Further, as discussed, *supra*, aggregate data will not contain any student-specific or otherwise confidential student record information of any student, and thus is not privileged and protected from disclosure.

However, it is unclear to me if this anonymity will be ensured when the disaggregated information is separated by native language, as sought in the last two bullets. As I explained in greater detail in the *November 2022 Ruling*, the risk of disclosure of protected student-specific and student-record information³³, particularly, as here, involving information of a substantial number of immigrant students (for whom I, as an official of the Commonwealth, consistent with the April 2022 Attorney General's Advisory, have a duty to protect) is paramount, and outweighs any potential benefit Parent may obtain from the answer to the Interrogatory³⁴. The only way to know if there is a possibility of appropriate disclosure of this protected information is for me to review, *in camera*, Boston's answer, so that I may redact all protected student-specific, student-identifiable, and student record information, prior to the answer being provided to Parent³⁵. As such, Boston's *Objection* to Interrogatory 13 (as modified) is **DENIED**,

³² Parent agrees to a) eliminate the phrase "BPS generally and" in the main question; b) delete "number and" in the last two bullets; and c) only seek to have a "number" provided in response to the first 6 bullets if it is otherwise an amount Districts must report annually to DESE.

³³ See FERPA, 20 U.S.C. § 1232(g)(b)(1); M.G.L. c. 71, § 34F; 34 CFR §§ 99.30(a), 99.31(a)(9); 603 CMR 23.07(4)(b). see also 20 USC 1232(g)(a)(1)(A).

³⁴ *Attorney General Advisory: Equal Access to Public Education for All Students Irrespective of Immigration Status*, Updated April 2022.

³⁵ *In Re: Wilmington Public Schools* BSEA No. 97-3289, 4 MSER 60 (Erlichman, 1998); see *In Re: Plymouth Public Schools & Mass. Dept. of Mental Health* BSEA No. 06-2584, 12 MSER 33 (Crane, 2006); *In Re: Nashoba Regional School District* BSEA No. 03-0860, 10 MSER 98 (Crane, 2003).

however, Boston shall provide its answer to Interrogatory 13 (as modified) to me, first, for an *in camera* review consistent with this *Ruling*.

ORDER

Boston's *Objection* to Interrogatories 5 (as modified), 6 and 15 is **DENIED**. Boston shall forthwith provide a response to these Interrogatories unless discovery responses to these requests have already been provided³⁶. Boston's *Objection* to Interrogatories 9, 12, 22, 23 and 25, is **ALLOWED** and Boston is not required to provide any response to these Interrogatories. Boston's *Objection* as to Interrogatories 16 and 17 is **ALLOWED in part and DENIED in part**. Unless discovery responses have already been provided, Boston shall provide a response to the third sentence of Interrogatory 16 only with regard to Student's disability (childhood apraxia of speech), and shall respond to the following portion of Interrogatory 17: "Please identify any and all instructions and training materials tailored to the assessment of English learners with disabilities and provided to evaluators who assessed [Student] during the 2019-20 [after March, 2020], 2020-21, 2021-22, and 2022-23 school years". Boston is not required to provide a response to any other portion of Interrogatories 16 or 17. Finally, with regard to Interrogatory 13 (as modified), Boston's *Objection* is **DENIED** and, unless discovery responses have already been provided, Boston is ordered to provide an answer to this Interrogatory to me, first, for an *in camera* review.

By the Hearing Officer,

/s/ Marguerite M. Mitchell
Marguerite M. Mitchell

Date: January 17, 2023

³⁶ *Rule V(B)(2)*.