

**COMMONWEALTH OF MASSACHUSETTS  
BUREAU OF SPECIAL EDUCATION APPEALS**

**Student v. Marshfield Public Schools**

**BSEA # 2305747**

**RULING ON MARSHFIELD PUBLIC SCHOOLS' MOTION TO COMPEL AND  
MOTION TO STRIKE PARENT'S RESPONSE TO ITS MOTION TO DISMISS AND  
PARENT'S MOTION TO STRIKE MARSHFIELD'S RESPONSE (TO PARENT'S  
HEARING REQUEST)**

*PROCEDURAL HISTORY*

On March 1, 2023 Marshfield Public Schools ("Marshfield") filed a Motion to Compel, seeking an Order a) compelling the Parent to consent to the disclosure of student records held by the Middlebridge School to Marshfield or b) to otherwise preclude the Parent from introducing into evidence or relying upon such records as evidence during any proceedings or pleadings in this matter. On March 8, 2023, Parent filed an Opposition to Marshfield's Motion to Strike and Marshfield's Motion to Compel.

*MARSHFIELD'S POSITION*

Marshfield argues that Parent's Hearing Request sets forth allegations of procedural violations made by Marshfield (including failure to invite out-of-district representatives to Team meetings), and further seeks reimbursement from Marshfield for the cost of Student's placement at Middlebridge. Student's records held by Middlebridge would therefore provide information relevant to material issues in dispute in this matter. As Middlebridge is located in Rhode Island, it refuses to release the records in the absence of a court order from a Rhode Island state court. Marshfield has requested that Parent sign a release so that it may obtain Student's Middlebridge records. Parent has not provided consent.

*PARENTS' POSITION*

Parent states that Marshfield is seeking to compel her to produce discovery, but has not requested discovery from her. Further, she states that she was not a party to the subpoena to which the Motion to Compel relates, and cites to a case that is not relevant to the facts before me. Parent states that because she is not a party to the subpoena she cannot be compelled to facilitate the subpoena and argues that Marshfield is "playing litigation games" in violation of Plaintiff's due process rights. Further, she claims that discovery does not include the creation of documents that are not already in existence. Additionally, Parent raises issues, not relevant to the Motions filed by Marshfield which are not addressed by this Ruling.

## *FACTS<sup>1</sup>*

Parent filed a Request for Hearing on January 6, 2023. The matter is scheduled to proceed to Hearing on March 23, 2023. At Marshfield's request the BSEA issued a subpoena, dated January 20, 2023 requiring the production by February 3, 2023, of various Student records to Marshfield's counsel. (Exhibit A) On January 30, 2023, Marshfield's counsel spoke to counsel for Middlebridge who informed her that Middlebridge would not be providing any student records in response to the subpoena because it is not subject to Massachusetts law. Further, counsel for Middlebridge stated it would only provide the records upon a court order issued by a Rhode Island state court or if Student's parent consented to release of the records. (Exhibit B) On February 3, 2023, Marshfield's counsel emailed Parent, explained the situation, and requested that Parent provide consent for the release of the records. (Exhibit C) On February 15, 2023, Marshfield's counsel sent Parent a follow-up email to ask whether Parent would provide consent for the release of the records. (Exhibit B, C) As of February 28, 2023, Parent had not responded to Marshfield's counsel.

## *ANALYSIS/CONCLUSION*

I am presently unable to rule on this Motion. Before I can determine whether I have the authority to issue an Order compelling Parent to consent to the disclosure of student records held by Middlebridge, I must be clear on Parent's status in the instant matter. Student has reached the age of majority and Parent therefore may not have legal authority to consent to a release of Student's records. The implications of Parent's status on this proceeding are even more far reaching than the ability to consent to release of records. They may extend to standing generally and other considerations with respect to the scope of issues raised in the hearing request. (See Ruling on Motion to Dismiss dated March 14, 2023)

Parent shall clarify her status with respect to his matter on or before the close of business on March 15, 2023, including her status with respect to her adult daughter and whether or not she is appearing as counsel. Similarly, if Marshfield is in possession of any documents which may assist in clarifying said status (e.g., Age of Majority Consent Form opting to share educational decision making authority with Parent), it shall provide them to the Hearing Officer by same date.

## **ORDER**

Marshfield's Motion to Compel is DEFERRED, as I am unable to ascertain who has the authority to consent to the release of records.

Parent shall provide the Hearing Officer with clarification as to the whether she is appearing as a pro se parent or as an attorney for the Student/Parent and shall provide a copy of any Age of Majority Consent Form that has been signed by Student **by 5:00 tomorrow, March 15, 2023.**

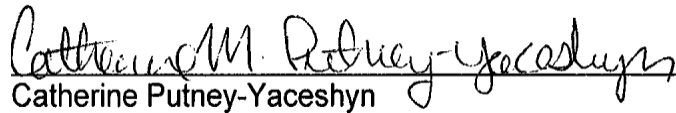
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<sup>1</sup> The facts are established for purposes of this Ruling only.

Her response shall be sent to the Hearing Officer by email as required by BSEA Standing Order 23-1<sup>2</sup>.

Additionally, I hereby DENY Mansfield's Motion to Strike Parent's late response to its Motion to Dismiss, as there was no prejudice alleged or caused by the delay. Likewise, I DENY Parent's Request to Strike Mansfield's Response which was not late. Even if the response had been late, there was no prejudice alleged by Parent.

So ordered by the Hearing Officer,

  
Catherine Putney-Yacashyn

Dated: March 14, 2023

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<sup>2</sup> BSEA Standing Order states in relevant part, A2. All written submissions other than Hearing Requests, including but not limited to, motions, pleadings, documents, correspondence, and written communications shall be emailed directly to the assigned Hearing Officer's email address as an attachment, unless otherwise allowed by the Hearing Officer.