

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In Re: Zebulon¹

BSEA #1600059

&

Quincy Public Schools

CORRECTED ORDER

RULING ON SCHOOL'S MOTION FOR PROTECTIVE ORDER

This matter comes before the Hearing Officer on the School's Motion for a Protective Order to shield it from answering four Interrogatories propounded by the Student. Arguments on the Motion were heard during a conference call on August 25, 2015.

At a prehearing conference held on August 19, 2015 the Parties agreed that the issues for resolution at Hearing are:

1. Whether the 2015-2016 IEP developed by Quincy Public Schools, calling for the Student to receive special education programming at the May Center, is reasonably calculated to ensure a free, appropriate public education to him?
2. If not, whether the Parents' preferred placement, Nashoba Learning Center, would provide an appropriate special education program for the Student?

This matter is scheduled for Hearing on October 9, 15, & 26, 2015.

In essence this is a dispute over placement: an out-of-district placement selected by Quincy versus an out-of-district placement advocated by the Parents. The Parents argue that the proposed placement at the May Center is substantively inappropriate for the Student. They contend that Quincy chose the May Center placement for the Student for reasons other than its special education services, including costs to the district and ease of transportation. The Parents

¹ "Zebulon is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

assert that the program at Nashoba Learning Center is better suited to meet the Student's unique learning needs. They seek information from Quincy concerning the current and historical structural, financial and transportation arrangements for Quincy students placed at the May Center, and at other out-of-district day schools, in order to explore the possible impact these factors may have had on the choice of placement for the Student.

The School demurs, arguing that the Team chose to place the Student at the May Center because it offers all the services identified as necessary by the Team. The School argues that inquiries into its financial arrangements with the May Center and/or its transportation vendors, and/or the special education placement arrangements of students other than Zebulon are irrelevant to the determination of the appropriate special education placement for Zebulon.

Not all information gleaned through formal discovery mechanisms may be admissible in the hearing, or even relevant to the ultimate issues and arguments presented at hearing. 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. In special education practice in particular, one goal of the due process system is transparency and equality of access to information about the Student and special education services. Federal and state special education policies and regulations encourage the Team approach, consensus building, information sharing, and joint implementation at every stage of special education planning and delivery. Information that is, or may be, relevant to any aspect of a Student's appeal, no matter how tangential it may seem to be at the time of the request, should be shared absent a reasonable showing of privilege, harassment, intrusiveness or unequivocal irrelevance.

Here, while the financial arrangements between Quincy and the May Center and between Quincy and its transportation services will not be a factor in determining the substantive appropriateness of the proposed May Center placement for Zebulon, that information may assist in developing or in sidelining the Parents' bias-related arguments. Similarly, while the Parents' requests for information concerning the out-of-district placements of Quincy students other than Zebulon appear at first to be overreaching and irrelevant, some of that information may, again, serve to buttress or to diminish their bias-related arguments. All the information requested by the Parents is likely to have been recorded or reported in the usual course of public business, does not implicate the identification of any other student, and is not overly burdensome in scope or in length.

Therefore the School's Motion for a Protective Order is DENIED, in part, with the following caveats:

1. As the Parents' arguments center on the appropriateness of the May Center and the Nashoba Learning Center, many of the School's responses may be limited to those two educational programs.

2. The School shall redact any and all information which could lead to the identification of any student other than Zebulon. At a minimum the School shall remove or obscure the names of the student and family members, the family's address, the date and place of birth of the

student, the gender, race, ethnicity and language of the student, any unique student numbers and any reference to a uniquely identifiable physical or mental characteristic.

3. The redacted documents shall be provided solely to counsel for the Parents, and not to the Parents, Student or any other person or entity. Counsel for the Parents may disclose the redacted documents to experts who are assisting Parents regarding appropriate peer groupings for Student and related issues and/or who may testify at the hearing.

4. Counsel shall maintain control of all documents produced pursuant to this order and must be present when they are reviewed by any other individual. No copies shall be made except for use as hearing exhibits.

5. Counsel for the Parents may submit copies of some or all of the redacted documents as exhibits at hearing.

6. Except as described in (3) and (4) above, counsel shall not disclose the documents or information therein to any other person or entity.

By the Hearing Officer

Lindsay Byrne
Dated: September 2, 2015