

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

**Worcester Public Schools v.  
Fitchburg Public Schools  
& the Department of Elementary  
and Secondary Education**

**BSEA # 1709036**

**RULING ON WORCESTER PUBLIC SCHOOLS' MOTION TO COMPEL THE  
DEPARTMENT OF CHILDREN AND FAMILIES' COMPLIANCE  
WITH HEARING OFFICER'S RULING**

This case involves an appeal by Worcester Public Schools ("Worcester") of the Department of Elementary and Secondary Education's ("DESE") assignment of financial responsibility for the student ("Student".) Specifically, Worcester alleges that DESE assigned financial responsibility to Worcester and it should have assigned *joint* financial responsibility to Worcester and Fitchburg.

This Motion to Compel Compliance was filed by Worcester and opposed by the Department of Children and Families ("DCF") after it received a subpoena *duces tecum* from Worcester requesting that documents pertaining to Student be produced at the offices of Worcester's counsel. The hearing officer issued an Order granting some of DCF's requests for protective orders and ordering that other documents be provided. (See Ruling dated July 13, 2017.)

In its Motion to Compel, Worcester states that it has not received a response from DCF to the Subpoena *Duces Tecum*. It further states that it is unable to proceed with its preparation for hearing in the absence of a response from DCF. DCF requested a hearing on the motion which was held on September 5, 2017. In arguing against the Motion to Compel, DCF raised an argument that it had not raised prior to the issuance of my July 17, 2017 Ruling. Its new argument was that in LEA assignment appeals the hearing officer is limited to reviewing only the documentation that the Department of Elementary and Secondary Education (DESE) reviewed in making its LEA determination in the first instance. Therefore, the only documents relevant at the BSEA hearing are the documents in the record on which DESE relied in issuing its LEA Assignment, and any other documents are beyond the scope of discovery. DCF argued that it has encountered similar requests for records from other school districts. It explained that some districts are using the BSEA discovery process to provide them with access to documents to which they would otherwise not have access. It argues that using discovery in this manner is improper, because the only documents relevant to a BSEA LEA assignment review are the documents contained in the original record reviewed by DESE. The records sought by Worcester, it argues, are not records which would be relevant to the BSEA appeal of the LEA assignment, because any new information not provided to DESE would have to be re-submitted to DESE for its consideration before the BSEA could review it. I agree with DCF. My reasoning follows.

The Massachusetts Rules of Civil Procedure, although not controlling for the BSEA, are instructive with respect to discovery. Rule 26(b) Scope of Discovery, states in relevant part, Parties may obtain discovery regarding any matter, not privileged, which is *relevant to the subject matter involved in the pending action*, .... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of *admissible evidence*. (Emphasis added.)

In the case at hand, Worcester seeks information from DCF that is not relevant to the subject matter involved in the matter pending before me. As argued by DCF, the only information relevant to the matter before me, an appeal of an LEA Assignment made by DESE, is the record that DESE had before it when it made its determination. 603 CMR 28.10(9)(b)(1) states “A request for appeal shall be based only on the information provided to the Department [DESE] under 603 CMR 28.10(8)(b) and 603 CMR 28.10(8)(f) if applicable.” Further 603 CMR 28.10(9)(e) states that the BSEA may return the case to DESE based on new information presented at the hearing.

Any information provided to Worcester by DCF would be irrelevant to the appeal before me. It could only be used by Worcester to submit a new request for an LEA assignment to DESE. If Worcester sought to introduce said discovery into evidence in the matter before me, I would be required by regulation to refer the matter to DESE to allow it to consider any new evidence and make a new determination.

Therefore, I am persuaded by DCF that it should not be compelled to provide Worcester’s requested discovery. It is irrelevant to the matter before me and is not reasonably calculated to lead to the discovery of information that would be relevant to the issue before me.

**ORDER**

Worcester’s Motion to Compel is DENIED.

By the Hearing Officer

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Catherine M. Putney-Yaceshyn

Dated: October 3, 2017