

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In Re: Jerrol¹

&

BSEA #1900557

Haverhill Public Schools

RULING ON SCHOOL MOTION FOR A PROTECTIVE ORDER

This matter comes before the Hearing Officer on the School's Motion for a Protective Order which would limit or prohibit the disclosure of peer/potential peer information in response to the Parents' Request for Production of document #10 which seeks the sanitized/redacted IEPs of students with whom Sebastian would be grouped pursuant to the 2018-2019 IEP proposed by Haverhill.

The School argues that the information the Parents seek is intrusive, irrelevant and overly burdensome. It also contends that production of sensitive information about other students would violate the privacy rights of those students without any countervailing benefit to Jerrol. The Parents argue that information about the cognitive, educational and behavioral characteristics of the Student's peer grouping is critical to their assessment of the appropriateness of Beverly's special education program for Jerrol. They also contend that the documents sought, appropriately cleansed of all potentially identifying student information, are not immune from disclosure in a special education administrative hearing.

These arguments are revisited frequently in BSEA matters and have spawned a long line of consistent decisions from which I will not depart here. *Beverly and Flavio*, 24 MSER 156 (2018); *Manchester-Essex R.S.D.*, 23 MSER 8 (2017); *Andover Public Schools*, 22 MSER 148 (2016); *Touchstone Public Schools*, 21 MSER 137 (2015); *Wellesley Public Schools and Vic.* 21 MSER 39 (2015); *Mattapoisett Public Schools*, 13 MSER 22 (2007). So long as the requested documents are appropriately cleansed of all personally identifiable references, their release for discovery purposes in an administrative hearing before the BSEA is not barred by 603 CMR 23.07 (4)

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

Production of the peer IEPs is no more intrusive when sought by the Parents in discovery than when reviewed by school staff and its legal representatives in preparation for a hearing. Nor is proper preparation of the documents for release unduly burdensome in the context of a contested special education matter. Should there be some exceptional circumstance unique to this case that warrants a higher level of scrutiny or security that should be brought to the Hearing Officer's attention. Thus far none has.

Therefore, the School's Motion for a Protective order is DENIED. The School shall provide Parents' counsel with documents responsive to the Parents' Requests for Production of Documents #10 no later than December 20, 2018. The following conditions apply to the release, receipt, custody and maintenance of the School's document response:

1. The documents requested shall be cleansed of all identifying information, including, at minimum, the name of the child, name(s) of parent(s) or other family members, address, date and place of birth, gender, race/ethnicity, any language(s) other than English that are spoken by student and/or parents; and any student number(s) assigned to such students(s).
- 2.) 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.
- 3.) Counsel for the Parents may request Hearing Officer permission to submit copies of some or all of the redacted documents as exhibits at hearing.
- 4.) Except as described in (2) and (3) above, counsel shall not disclose the documents or or information therein to any other person or entity.
- 5.) Upon the close of the record in this matter, counsel for the Parents shall ensure that any copies of documents that may have been provided to experts per Paragraph 2 are returned to counsel, and subsequently to the school district.

By the Hearing Officer

Lindsay Byrne

Dated: November 19, 2018