

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

In Re: Nicholas R. v.
Dracut Public Schools

BSEA # 1903603

**Ruling on Dracut Public Schools' Motion for Protective Order and Parents'
Motion for Order for Dracut Public Schools to Send Out Referral Packages**

This Ruling addresses Dracut Public Schools' Motion for Protective Order and Parents' Motion for Order for Dracut Public Schools to Send Out Referral Packages as explained below.

I. Dracut Public Schools' Motion for Protective Order:

On or about November 6, 2018, Parents in the above-referenced matter served Dracut with Parents' First Request for Production of Documents and First Set of Interrogatories.

On November 8, 2018, Dracut Public Schools filed general objections to Parents' First Request for Production of Documents and Parents First Set of Interrogatories. Thereafter, on November 16, 2018, Dracut filed its formal Objections to Parents' Discovery Requests and Motion for a Protective Order and accompanying Memorandum of Law. Dracut sought to be heard on this motion.

Specifically, Dracut seeks a Protective Order which limits or prohibits disclosure of peer/potential peer information in response to the Parents' request for production of documents #16, #17 and #18. While documents #16 and #17 seek sanitized/redacted IEPs and schedules of students with whom Student was grouped during the 2017-2018 school year and with whom Student is grouped pursuant to the 2018-2019 IEP, document request # 18 seeks the redacted IEPs for each student whom Dracut believes has provided positive social interaction for Student along with the class or activity during which such positive interaction took place. Dracut further objects to Parents' interrogatories #1 and #2 which also seek past and present peer information including the use of behavioral intervention plans for the aforementioned peers.

According to Dracut, the information sought by Parents is intrusive, irrelevant and overly burdensome. Dracut also contends that production of sensitive information about other students would violate the privacy rights of those students without any countervailing benefit to Student.

Parents objected to Dracut's Motion on November 21, 2018, arguing that its requests for documents #16, #17 and #18, and interrogatories #1 and #2, were relevant and neither overly broad nor unduly burdensome, and therefore production was permissible. Parents further noted that information about the cognitive, educational and behavioral characteristics of Student's peer grouping was critical to their assessment of the appropriateness of Dracut's special education program for Student.

Dracut's request to be heard on the Motion is unnecessary as Parents' requests, the School's objections, and the Parties' arguments are not novel to the BSEA but rather have been the subject of numerous rulings issued over a long period of time.¹ Oral arguments on these issues will not further the Hearing Officer's understanding of the issues and hence are unnecessary. Dracut's request to be heard on the Motion is therefore **DENIED**.

With respect to Parents' requests for documents #16, #17 and # 18, and interrogatories #1 and #2, Parents are correct that the arguments offered by Dracut are not novel to the BSEA and have in fact been the subject of previous, consistent rulings. *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). The documents sought, appropriately cleansed of all potentially identifying student information, and with appropriate additional protections are not immune from disclosure in a special education administrative hearing.

As most recently noted in *Jerrol v. Haverhill Public Schools*, BSEA #1900557 (Byrne, 11/19/2018), addressing a request similar to that made by Dracut in the instant case,

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).

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.

Here, I too decline to depart from the long line of previous, consistent rulings including *Jerrol*. Should Dracut be able to cite some exceptional circumstance unique to the case at bar, warranting a higher level of scrutiny or security, Dracut may raise the specific concern with the Hearing Officer. Thus far Dracut has raised none.

¹ See *Beverly Public Schools*, BSEA # 1810763, 24 MSER 156 (Byrne, 8/14/18); *In Re: Arlington Public Schools*, BSEA # 1611465, 22 MSER 153 (Figueroa, 8/9/16).

Therefore, Dracut's Motion for a Protective Order is **DENIED**. Dracut shall provide Parents' counsel with documents responsive to the Parents' Requests for Production of Documents #16, #17 and #18, and Interrogatories #1 and #2 by the close of business on **January 25, 2019**.

Specifically, with respect to Parents' document request #18, to the extent that the pertinent IEPs are included as part of the IEPs produced in response to requests #16 and #17, Dracut need not produce them again, but instead shall identify to which IEPs the response to document request #18 refers. To the extent that the Parties have additional questions regarding Parents' Request #18, if they are unable to reach resolution after having attempted to resolve this issue informally, they may bring their remaining dispute regarding request #18 to the Hearing Officer's attention.

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 only 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 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.

II. Parents' Motion for Order for Dracut Public Schools to Send Out Referral Packages:

On November 21, 2018, Parents filed a Motion for An Order for Dracut Public Schools to Send Out Referral Packages. Specifically, Parents sought that Dracut send referral packages for exploratory purposes only to the Collaborative for Regional Educational Services and Training (CREST), and to the LABBB Collaborative (LABBB) to ascertain whether placement for Student (a twelve year old with Autism Spectrum Disorder- Level 2, Attention Deficit Hyperactivity Disorder (ADHD), Language Disorder, Generalized Anxiety Disorder, Separation Anxiety Disorder, Encopresis and Enuresis) would be appropriate. According to Parents, Student's psychological condition has deteriorated during the past year and he has become more dysregulated and aggressive.

Dracut opposed Parents' Motion on November 26, 2018 noting the Hearing Officer's lack of jurisdiction to issue the Order sought by Parents. I note that neither Party cited to any authority granting the Hearing Officer authority to acquiesce to Parents' Motion at this juncture. Dracut is correct that short of a Hearing the BSEA lacks jurisdiction to order issuance of referral packets. As such, Parents' Motion is **DENIED**.

So Ordered By the Hearing Officer,

Rosa I. Figueroa

Dated: December 19, 2018