

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

In Re: Student v.
Scituate Public Schools

BSEA# 1702015

Ruling on Scituate Public Schools' Motion to Compel Parents' Responses to First Request for Production of Documents and First Request for Interrogatories and Scituate's Response to Parents' Continued Refusal to Provide Documents; Scituate Public Schools' Motion to Dismiss

On December 16, 2016, Scituate Public Schools (Scituate) submitted a status report noting 'that it had provided Parents a copy of Student's record. Scituate further noted that Student continued to be absent from school and that the in-home/community-based FBA had not been completed (despite Parents' consent to the evaluation on November 8, 2016), and Parents had not yet consented to the school-based evaluations which were provided to them on November 14, 2016. Lastly, Scituate stated that it had transportation and a bus monitor available to begin transportation for Student since November 15, 2016, but that Parents had failed to make Student available to be measured for a harness. Consequently, Student remained out of school.

On December 21, 2016, Parents forwarded to the BSEA a letter written on December 19, 2016, by Diane Bartlett one of the individuals subpoenaed by Scituate, who sought a four day extension to produce the documents subpoenaed.¹

On December 22, 2016, Scituate filed a Motion to Compel Parents' Responses to First Request for Production of Documents and First Request for Interrogatories and Scituate's Response to Parents Continued Refusal to Provide Documents despite the BSEA's Ruling issued on December 6, 2016.

Parents responded on December 22, 2016 disagreeing that they had received a complete Student record from Scituate. Parents further explained that they were attempting to gather all of the records subpoenaed from their providers and would be redacting them and creating a 4th binder of documents as "eyes only" to be produced on the date of Hearing for qualified individuals with expertise in the particular area to view, interpret and offer accurate judgments. Parents further noted that

¹ The Hearing Officer was out of state at the time this request was received by the BSEA and did not return to Massachusetts until after December 23, 2016. Since the deadline sought by Ms. Bartlett is long gone, this request is moot.

None of the new information we will provide will come without first being reviewed by us and it will include any redactions of personal information that is not a conversation about [Student's] educational need in the special educational system with his disability considerations.

Parents noted that the aforementioned records were their personal property and therefore, they wished for all copies to be returned to them after the Hearing.

On December 27, 2016, Parents forwarded a letter written by Aasma Khandekar, MD, on December 21, 2016, which recommended that as a matter of safety Student receive home tutoring until the BSEA Hearing process was completed, and stating that Student's threats of harm to others were a "critical complicating factor" in the process of identifying an appropriate educational setting for Student.

On January 3, 2017, Scituate filed a Motion to Dismiss arguing that Parents had failed to comply with the orders issued by the BSEA and had not yet produced responses to the Discovery Requests served by Scituate on October 3, 2016. A Ruling regarding Discovery was issued on December 6, 2016, which Ruling also set timelines for responses which, according to Scituate, Parents had disregarded. Scituate argued that since a Hearing in this matter was scheduled for February 9, 10 and 13, 2017, Parents' refusal to comply with the Orders placed Scituate at a disadvantage, preventing it from properly preparing for Hearing. As such, Scituate sought dismissal consistent with Rule XVII B.2 and B.3 of the *Hearing Rules for Special Education Appeals*.

On January 10, 2017, Parents submitted their Objection to Scituate's Motion to Dismiss, disagreeing with some of the assertions made by Scituate, requesting that Scituate narrow the scope of discovery, noting that they had not yet received a response to their request for documents from the district, stating their request to participate in mediation, and seeking assistance from the BSEA to resolve the pending issues.

On January 11, 2017, Scituate wrote to the BSEA seeking a copy of any pleading filed by Parents, as counsel for Scituate had not been copied by Parents on their submissions to the BSEA. The following day Scituate filed a Response to Parents' Objections to Scituate's Motion to Dismiss, offering further arguments/clarification supporting its position.

In response to the Parties positions, a telephone conference call was held on January 13, 2017. All of the above was thoroughly discussed during the almost one hour telephone conference call, as a result of which, after listening to the Parties, several verbal Orders and Rulings, were entered and are memorialized below:

1. Parents are found to be out of compliance with the Orders issued by the BSEA in the Ruling issued on December 6, 2017. As such, Parents are ordered to respond to Scituate's discovery requests by the close of business on January 20, 2017.
2. Scituate's Motion to Dismiss is DENIED. Scituate shall:
 - a) Reissue the subpoena requests regarding production of documents involving Student's mental health/treatment issues to the BSEA by the close of business on January 19, 2017. All other subpoenas/production of documents may be forwarded directly to Scituate. It is suggested that Scituate only request information necessary to support its position at Hearing.
 - b) Respond to Parents' requests for documents including nurse's notes, attendance records, summer program records, minutes/notes of meetings, etc. If the record requested by Parents does not exist, Scituate need not create a record but shall inform Parents that the record does not exist.
3. Parents shall:
 - a) Make a written request for *in camera* review of the sensitive records only (e.g., psychologist/clinical social worker/psychiatric notes and hospitalization records).
 - b) Provide the individuals/institutions subject to the subpoenas releases of information for the documents to be produced to the BSEA as soon as possible.
 - c) Bring the harness they have at home (which they use to transport Student and which they assert fits him) to Scituate so that Scituate can purchase one like it to transport Student. I note that Mother stated during the telephone conference call that Parents agreed to have Scituate use their harness to transport Student to school while Scituate obtains a harness.

The Parties have been advised that no postponement of the Hearing will be granted, especially in light of the fact that Student is currently hospitalized. Parents have stated that they are in the process of obtaining a neuropsychological evaluation. If the report of this evaluation is available to the Team for discussion prior to the Hearing, Parents shall provide it to Scituate, but if the report of the neuropsychological evaluation is not available the Hearing will proceed without it. Evidence regarding Student's current needs/ concerns may be offered through other sources.

Parents are reminded again that a copy of any submission forwarded to the BSEA must be simultaneously forwarded to Scituate's attorney (not Scituate's special education office).

Lastly, Parents have expressed a desire to engage in Mediation. The Parties may participate in this voluntary process if they so choose, however, the Hearing will not be delayed because of Mediation. Hearing dates were selected by the Parties during the Pre-hearing Conference on November 8, 2016 and the Parties have had ample opportunity to engage in any process of their choice since that time.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: January 17, 2017