



MURPHY HESSE
TOOMEY & LEHANE LLP

Attorneys at Law

**Special Education Client Advisory
March 2012**

**Hearing Officer Rules Evaluations and Assessments of Classmates
Not Discoverable in BSEA Dispute**

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On February 22, 2012, a hearing officer of the Bureau of Special Education Appeals (BSEA) held that a public school district need not produce copies of evaluations and assessments of classmates of the Student at issue in a BSEA dispute. In *In re: Student & Danvers Public Schools*, BSEA #12-3302, Hearing Officer Sara Berman used her authority under Rule VI (C) of the BSEA Hearing Rules to protect the evaluations and assessments of Student's peers and classmates from discovery. The ruling came as clarification of an earlier order relating to a contentious discovery dispute between Parents and the District.

During discovery, Parents had requested a wide range of documents related to other students, purportedly to gather information on whether there was an appropriate peer group for Student in his in-district program. Hearing Officer Berman affirmed that the Individualized Education Plans (IEPs) and Section 504 Accommodation Plans for such students were discoverable, when properly redacted. However, the Hearing Officer ruled that releasing evaluations and assessments of such students would be "highly intrusive", and that no amount of redaction would be adequate for such documents.

The Hearing Officer was particularly concerned that it would be difficult to adequately remove all reference to a student's family or home situation while preserving any information potentially relevant to the case of Student. Furthermore, the Hearing Officer noted, the most useful and relevant information from evaluations and assessments of these classmates was likely to be included in their IEPs and Section 504 Accommodation Plans.

Accordingly, Hearing Officer Berman determined that it was "reasonable, appropriate, and well within [the discretion of the Hearing Officer] to protect the highly confidential and sensitive information contained" in the evaluations and assessments of other students in Student's classes. Therefore, the District was not required to produce such documents in response to the Parents' discovery requests.

Phone 617-479-5000

Fax 617-479-6469

www.mhtl.com



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As things now stand, BSEA hearing officers hold that IEPs and Section 504 Accommodation Plans of peers of the Student at issue are discoverable to the Parents during litigation; however, those documents must be carefully redacted and their publication restricted, as may be worked out between the parties and the hearing officer assigned to a particular case. Although Hearing Officer Berman's ruling on evaluations and assessments is not binding on the other six (6) hearing officers at the BSEA, school districts now have good authority to resist handing over such personal documents of the Student's classmates. We will keep you apprised of further developments on this issue.

This Alert was prepared by Tami L. Fay, an associate in the law firm of Murphy, Hesse, Toomey & Lehane, LLP. If you have any questions or concerns with regard to this alert, please contact Attorney Fay, the attorney assigned to your account, or your own special education counsel.

Murphy, Hesse, Toomey & Lehane, LLP, is a full-service law firm with offices in Quincy, Boston, and Springfield, Massachusetts. The firm represents over 125 schools in Massachusetts on education and special education matters.

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