

**BEFORE THE KANSAS STATE DEPARTMENT OF EDUCATION  
DUE PROCESS HEARING OFFICER**

<b>TOLGA ULUSEMRE and XIAOLEI XU,</b>	)	
<b>on behalf of D. [REDACTED] U. [REDACTED] and</b>	)	
<b>A. [REDACTED] U. [REDACTED],</b>	)	
	)	
<b>Parents,</b>	)	<b>No. 24DP229-001</b>
<b>v.</b>	)	<b>Special Education Due Process</b>
	)	
<b>BLUE VALLEY U.S.D. 229,</b>	)	
	)	
<b>Defendant.</b>	)	

**DISTRICT’S MOTION FOR SHIFTING OF CERTAIN DISCOVERY COSTS**

Blue Valley U.S.D. 229 (the District) moves the Hearing Officer for an order shifting from the District to the Parents half of \$688.75 in vendor costs that the District incurred to comply with the Parents’ internal District email discovery request. The Parents should be ordered to pay half of the vendor cost, \$344.38, directly to the District within 14 days for the reasons that follow.

**I. Procedural Background Regarding Internal Email Communication**

The Order Regarding Parents’ Second Amended Discovery Requests Served July 23, 2024 sets forth part of the lengthy procedural background regarding the Parents’ request for production of District email:

- Parents initially requested discovery of all notes, correspondence, etc., concerning D.U., A.U., and Parents by all persons associated with the District at any time. See Discovery Order No. 1 at 5 (dated June 28, 2024).
- On June 28, 2024, the [Hearing Officer] ruled that the request was overly broad and not confined to issues in the case, and allowed Parents an opportunity to “restate their request to seek information regarding communications and notes/records of specific individuals, during specific time frames and/or relating to specific topics that are reasonably related to issues to be decided in the due process proceeding.” Id.
- On July 12, 2024, Parents revised their requests, seeking any emails concerning D.U., A.U. and/or Parents that were sent to, or sent by, the following teachers between August 1, 2022, and February 28, 2023: Lily Bordoni, Meaghan Graber, Peggy Salts, Kelly Northup, Kristin Kellerman, Stephanie Cleland,

Polly Blair, and Benjamin Wang; and the following teachers between August 1, 2023 and February 29, 2024: Suzanne Martin, Elizabeth Newell, Maury Hernandez, and Erin Lorton. See Parents' Discovery Requests On July 12, 2024.

- At a status conference with the parties on the morning of July 15, 2024, the [Hearing Officer] found the revised requests were “overly broad and would be unduly burdensome, costly, and time-consuming in proportion to the needs and expedited nature of the case.” [See] Discovery Order No. 2 at 1-2 (dated July 16, 2024). The [Hearing Officer] ruled that, on or before July 22, 2024, Parents could “submit a revised request for specific email communication that is narrowly tailored to specific individuals involved in specific events and/or subject matters over a discrete time period (e.g., over the course of one or two weeks) which is tied to or related to the specific event and/or subject matter.” **The [Hearing Officer] further ruled that, if Parents sought broader discovery of internal email communications, they should do so by July 22, 2024, and that, in deciding whether to grant such a request, the undersigned would consider requiring Parents to pay all or part of any associated costs** and would likely continue the due process hearing scheduled for September 16, 2024. Id. at 2.
- On the afternoon of July 15, 2024, Parents submitted revised requests with respect to the same individuals listed in the July 12 requests and, this time, asked for emails that were *sent by* the individuals instead of emails that were *sent to and sent by* the individuals. See Parents' Amended Discovery Requests On July 15, 2024. Additionally, Parents added a third category of email correspondence concerning D.U., A.U. and/or Parents sent by the following teachers from February 20, 2023 and April 30, 2023: Mary Brown, Cade Chace, Kate Burrow, Librarian of Cedar Hills Elementary, Carey Bowden, and Jennifer Schulte. Id.
- On July 18, 2024, Parents communicated by email that, pursuant to rulings stated in Discovery Order No. 2, they adhered to their July 15 requests. See 07/28/24 Email from T. Ulusemre (at 7:46:24 p.m.). **Parents further stated: “We will be content with incurring the expenses and with the delays that the aforementioned discovery efforts might cause.”** Id.
- On July 21, 2024, [Hearing Officer] ruled by email that the July 18 revised requests remained too broad in scope and were “not sufficiently tailored to specific topics, events, and/or time frames that are relevant to matters to be decided in the case.” 07/21/24 Email from A. Gupta (at 4:49:36 p.m.). The [Hearing Officer] allowed Parents a third opportunity, until July 23, 2024, to revise their requests. In so doing, the [Hearing Officer] stated that, given the expedited nature of the proceeding, repeated opportunities to revise requests will not be available and, therefore, Parents should “take a hard look to identify specific, relevant email correspondence that the seek to discover.” In the email,

the [Hearing Officer] further clarified that, although the parties discussed the idea of broader discovery at the July 15 status conference, the [Hearing Officer] was not inclined to approve such measures and, before doing so, “would require a substantial showing that the proposed discovery is necessary and proportional to the needs of the case,” and that any such discovery would need to be “sufficiently tailored to the matters to be decided in the due process proceeding.” Id.

See Order Regarding Parents’ Second Amended Discovery Requests Served July 23, 2024 at pp. 1-2 (italics in original) (bold emphasis added).

On July 23, 2024, Parents served amended discovery requests that substantially revised their previous requests. See Parents’ Second Amended Discovery Requests Served On July 23, 2024. The District objected to the revised requests.

On August 20, 2024, the District’s objections to the Parents’ Second Amended Discovery Requests Served On July 23, 2024 were raised with the Hearing Officer during a discovery conference. See Discovery Order No. 3 and Scheduling Order No. 3 at § I.A.2 and Second Order Regarding Parents’ Second Amended Discovery Requests Served July 23, 2024. The Hearing Officer issued an Order that denied certain discovery requests and required the Parents to refine and narrow the scope of other discovery requests by providing suggested terms. Id. The Order details the timeframes and custodians requested by the Parents during the discovery conference. See Second Order Regarding Parents’ Second Amended Discovery Requests Served July 23, 2024.

On August 23, 2024, the Parents served the Parents’ Amended Discovery Requests Served on August 23, 2024 by email. The email stated, in part, “Please find our amended request including search terms attached. Please note that the search terms we provide are not misspelled, and must be entered as they are stated in the document, with no restrictive search features/options such as ‘find words only’, ‘find exact match’, etc.” Parents proposed 158 search terms total across 8 sets of terms.

## II. Argument

A due process proceeding addresses specific alleged violations of special education law and is meant to be a much more efficient process as compared to typical civil litigation. The parties cannot conduct discovery as of right; instead, they must seek permission from the Hearing Officer to do any discovery at all. K.S.A. 72-3419(d); K.S.A. 77-522(a). The Hearing Officer is granted wide discretion to govern discovery and consider proportionality and burden arguments. There is good cause for cost-shifting where “discovery presents an ‘undue burden or expense’ relative to the prospective benefit of the discovery.” Lawson v. Spirit AeroSystems, Inc., 2020 WL 3288058, at \*10 (D. Kan. June 18, 2020), aff’d, 2020 WL 6939752 (D. Kan. Nov. 24, 2020) (citation omitted). Under that framework, here, the burden and expense of the internal email discovery requested by Parents outweighs its likely benefit and therefore supplies good cause for the Parents to *at least* share in the cost of procuring the internal email discovery.

It is difficult to track the exact number of requests served by the Parents on the District due to multiple revisions and amendments, but at a minimum, Parents served two full sets of discovery requests which each included requests for admissions, requests for documents, and interrogatories. With respect to documents, the District has already produced over 6,000 pages of documents. This production included all of the District’s correspondence with the Parents during the relevant periods, along with D.U.’s and A.U.’s special education records.

The District has repeatedly objected to the undue burden of searching for and reviewing additional email noting it would be costly and time-consuming in proportion to the needs of this case. Specifically, the District has reiterated that the daily correspondence between the District personnel and the Parents during the two school years at issue that was already produced includes the staff members’ observation of and perceptions about the students’ behavior, the Parents’

responses to those reports, and the District's efforts to collaborate with the Parents to address the Parents' safety concerns, Parents' requests for accommodations, etc. The Parents have also repeatedly asserted that they do not expect any District witnesses to support the Parents' perspective—thus making discovery of internal emails a perplexing and senseless exercise; Parents acknowledge those messages will likely just reiterate the staff members' external messages to the Parents (which have already been produced). The negligible value of any additional responsive emails that exist is thus far outweighed by the burden placed on the District. It is with this background that the District respectfully requests an order shifting from the District to the Parents half of the vendor costs associated with the Parents' internal email discovery request, \$344.38.

This request for cost shifting is not a surprise or unfair burden to the Parents. Despite notice that costs might be shifted, Parents continued to request District internal emails. After multiple revised and amended requests as set forth above, and after further discussion during discovery conferences, the Parents landed on their request for the District to review email from 22 custodians and 158 search terms over 8 requests. See Parents' Amended Discovery Requests Served on August 23, 2024. In addition, despite numerous conversations and orders from the Hearing Officer regarding the scope and purpose of this Due Process matter, the Parents still included terms clearly relating to issues which are, at best, tangential to these proceedings. Id. (i.e. Request No. 1 includes: variations of violence, threat, murder, kill, gun, weapon; Request No. 2 includes: variations of violence, threat, bomb, kill, gun, and weapon).

The District does not have the internal technological means or staff time to conduct sophisticated email searching or the ability to deduplicate emails against the large email production that was already completed. The District's counsel shared this limitation in written discovery objections and at discovery conferences with the parties and the Hearing Officer. Yet Parents still

made requests for “fuzzy” search terms; they demanded use of specific terms but indicated the District should not use “restrictive search features/options such as ‘find words only’, ‘find exact match’, etc.” It was therefore reasonable for the Parents to expect that the District would need to utilize an outside vendor to accomplish these sophisticated searches in the limited time available.

Indeed, at the direction of the undersigned, the District’s legal counsel utilized a reputable e-discovery vendor, Modus, to process email PST files from the District, run search terms, and load email hits for review in a platform that would allow deduplication. This cost was very reasonable, only \$688.75, and far less than originally projected by the vendor (around \$1,300). And the District seeks recovery of only half of this cost—\$344.38.

The District recognizes it generally must bear its discovery costs associated with this proceeding as a matter of course. The District is not seeking cost shifting for its expenses that will be associated with the considerable attorney time to review and produce the internal emails. That cost will far exceed the relatively low cost of the vendor’s work. Rather, the District is only seeking half of the vendor cost associated with digesting the email data and getting it reduced to a useable point for review. However, the Parents have been on notice that their demand to obtain internal District emails—a burdensome discovery request with little demonstrable value to the case—could carry with it an obligation to pay for the time and resources needed to complete that task. The reality is this due process is already very expensive for the District. Under the circumstances, there is good for cause to order Parents to pay some limited costs related to their requests for internal District email.

The undersigned requested an invoice from Modus for the work to digest, search, and load the appropriate set of email for the District’s legal counsel to review for production. The District has attached a true and accurate copy of that invoice here as **Exhibit 1**.

WHEREFORE, the District respectfully requests that the Parents be ordered to pay \$344.38—just half of the invoice—in vendor costs associated with the Parents’ internal email discovery request.

**SPENCER FANE LLP**

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ATTORNEYS FOR  
BLUE VALLEY U.S.D. 229

**CERTIFICATE OF SERVICE**

This will certify that a copy of the foregoing was served by electronic mail on September 20, 2024, to:

Tolga Ulusemre, Parent  
[tulusemre@gmail.com](mailto:tulusemre@gmail.com)

Xiaolei Xu, Parent  
[rainxxl@hotmail.com](mailto:rainxxl@hotmail.com)

Angela Gupta, Hearing Officer  
[angela@adrmediate.com](mailto:angela@adrmediate.com)

/s/ Madison A. Perry  
Attorney for Blue Valley U.S.D. 229

# EXHIBIT 1



# INVOICE

**Invoice To:**  
**Spencer Fane LLP**  
 1000 Walnut  
 Kansas City, MO 64106  
 United States

Invoice Number	M-09497
Payment Terms	Net 30
Invoice Date	09/01/2024
Due Date	10/01/2024

**Matter Name: Blue Valley-Ulusemre (14134\_0596)**

**Order Number: 5031532-0053**

Description	Unit	Quantity	Unit Price	Amount
<b>Project manager time</b> Kim Whaley 08/23/2024	Hour	.75	\$95.00	\$71.25
<b>Project manager time</b> Bhavin Bhatt 08/23/2024	Hour	.5	\$95.00	\$47.50
<b>Project manager time</b> Kim Whaley 08/26/2024	Hour	2	\$95.00	\$190.00
<b>Project manager time</b> Lee Soledad 08/26/2024	Hour	.25	\$95.00	\$23.75
<b>Evidence identification and data reduction by an eDiscovery Analyst</b> Zach Ludi 08/27/2024	Hour	.75	\$95.00	\$71.25
<b>Project manager time</b> Angelica Cativo 08/27/2024	Hour	.5	\$95.00	\$47.50
<b>Evidence identification and data reduction by an eDiscovery Analyst</b> Dhiraj Darji 08/28/2024	Hour	.5	\$95.00	\$47.50
<b>Evidence identification and data reduction by an eDiscovery Analyst</b> Sagar Khatal 08/28/2024	Hour	.25	\$95.00	\$23.75
<b>Evidence identification and data reduction by an eDiscovery Analyst</b> Jeet Thakkar 08/28/2024	Hour	1	\$95.00	\$95.00
<b>Project manager time</b> Lee Soledad 08/29/2024	Hour	.75	\$95.00	\$71.25

**(T) Subject to Sales Tax**

Subtotal	\$688.75
Tax	\$0.00
<b>Total</b>	<b>\$688.75</b>

**ACH Payments**  
 Account Holder: Repario Data LLC

**Remittance Address**  
 Repario Data



11333 N Scottsdale Road  
Suite 294  
Scottsdale, AZ 85254

**INVOICE**

Account Type: Commercial Checking - Santander Bank  
Routing Number: 231372691  
Account Number: 8947711551

P.O. Box 12891  
Philadelphia, PA 19176

**For questions about your invoice, contact Accounts Receivable at [Billing@repariodata.com](mailto:Billing@repariodata.com).**