

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

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

**MOTION TO COMPEL DISCOVERY AND FOR PROTECTIVE
ORDER**

Parents move the Hearing Officer to deny Tish Taylor’s motion to quash Parents’ subpoena to produce the data collection sheets on which Tish Taylor’s evaluations of A [REDACTED] and D [REDACTED] are based. Further, Parents also move the Hearing Officer to compel Tish Taylor to produce the data collection sheets for the purposes of this due process hearing. Finally, Parents move the Hearing Officer to impose sanctions on Melissa Hillman who has been consistently trying to embarrass and oppress Parents.

Parents read Tish Taylor’s aforementioned motion in utter disbelief. It might as well have been called “motion to whitewash data manipulation”. Parents can genuinely think of only two reasons why one would dare to draft such a motion: the movant believes that the target of the motion lacks intelligence, or the movant believes that the umpire is predisposed to rule in her favor, regardless of the content of the motion.

In her motion, Tish Taylor provides many reasons why Parents’ subpoena should be quashed: a) Parents’ subpoena seeks privileged and confidential documents that ethically cannot be produced, b) the assessment instruments are subject to copyright laws, c) Parents, as unqualified individuals, will misuse and misinterpret the assessment instruments, d) Parents are

trying to obtain copies of these reports for purposes of the malpractice claim asserted against Tish Taylor, e) the assessment instruments are not relevant to the due process hearing, f) disclosure of the assessment tools completed by teachers could result in retaliation.

Parents' Subpoena Seeks Privileged and Confidential Documents that Ethically cannot be Produced

The so-called “privileged and confidential documents that ethically cannot be produced”, as stated in the *Motion to Quash*, in fact refers to Tish Taylor’s psychotherapy notes, which are not the documents that the subpoena requests the production of. However, Tish Taylor equates psychotherapy notes with the data collection sheets that the subpoena actually requests the production of. Specifically, her motion states that “*the data collection sheets – better referred to as assessment instruments – requested in the Parents’ Subpoena should be treated the same as psychotherapy notes under HIPAA.*”

Yet, data collection sheets are distinct from psychotherapy notes, and the motion does not go any further than the sentence quoted above to explain why data collection sheets should be treated the same as psychotherapy notes. This is like saying an apple should be treated as an orange, without giving any justification for it. By way of using the same analogy of the attorney-client privilege that Tish Taylor used in her motion, psychotherapy notes are similar to attorney notes. Therapists and attorneys may or may not be obliged to share these notes with their clients. Data collection sheets, on the other hand, are similar to the evidence that support the legal claims that an attorney makes, whereas the legal claims are similar to the evaluation results a therapist reports. In the same sense that attorneys can withhold neither the legal claims they make nor the evidence that support these claims from their clients, therapists can withhold neither the evaluation results nor the data collection sheets that these results are based on from their clients (*Newport-*

Mesa Unified School District v. State of California Department of Education, 371 F. Supp. 2d 1170 (C.D. Cal. 2005). Not to mention that it is a subpoena that requests Tish Taylor to produce the data collection sheets for a legal proceeding, not a client who is requesting them for personal use.

If Tish Taylor's data collection sheets contain her notes on them, then she may or may not redact those notes before submitting them. The presence of notes does not normally constitute a valid reason for withholding the data collection sheet from a legal proceeding. Further, if Parents sue Tish Taylor for medical malpractice in the future, her notes regarding their children's evaluations will stop being privileged.

The Assessment Instruments are Subject to Copyright Laws

It is true that the assessment instruments are subject to copyright laws, but why is this Tish Taylor's concern? Does she believe that data collection sheets are subpoenaed so that Parents can re-sell them on e-Bay? To reiterate, Tish Taylor conflates a subpoena that she receives from a legal proceeding with a personal request from a client. If Tish Taylor is really worried about the dissemination of copyrighted materials, then a detailed protective order can be signed to ensure there the instruments are not circulated. Still, the instruments are not Tish Taylor's intellectual property but that of some corporations. Tish Taylor should be as concerned about the swiftness and fairness of legal proceedings or about her clients' well-being, as she is about corporate profits. Regardless, even those corporations do not object to releasing their copyrighted material for legal proceedings (<https://www.parinc.com/docs/default-source/faq-documents/photocopying-par-test-materials.pdf?ver=2017-07-13-124734-387>).

Parents, as Unqualified Individuals, will Misuse and Misinterpret the Assessment

Instruments

To support this argument, Tish Taylor cites Section 9.02 of the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct: "Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law." In that regard, Tish Taylor's main concern is that Parents, who are not trained individuals, will harm their own children by misinterpreting, misusing, and disseminating the data collection sheets. On the other hand, Tish Taylor does not seem to be concerned at all about the other untrained individuals who would, like Parents, have access to the data collection sheets if they were produced for the legal proceedings, such as the members of the governing body of BVSD, BVSD's legal team, the Hearing Officer, and her assistant. Quite the opposite, Tish Taylor has complete trust that the Hearing Officer, who is a lawyer by training and not a psychologist/therapist, will know how to use and interpret the data collection sheets properly, as the former requests the latter to do an *in camera* inspection to determine whether it is proper to release the data collection sheets to Parents.

Parents are Trying to Obtain Copies of These Reports for Purposes of the Malpractice Claim Asserted against Tish Taylor

Parents requested Tish Taylor to share the data collection sheets before they made a malpractice claim against her. Actually, the fact that she denied sharing the data collection sheets is an important reason why Parents made a malpractice claim against Tish Taylor. The very fact that Tish Taylor is vehemently and repeatedly, and now aggressively (with her motion to quash), refusing to disclose the data collection sheets, only indicates to Parents that she has something to hide.

The Assessment instruments are not Relevant to the Due Process Hearing

There is no need to honor this argument by refuting it. The subpoena was not subject to debate, faced no objection from the opposing party, and was swiftly approved by the Hearing Officer. It is nonsensical to argue that an independent educational evaluation is irrelevant to a special education due process hearing.

Disclosure of the Assessment Tools Completed by Teachers could Result in Retaliation

This is a defamatory rhetoric used by BVSD (and specifically, by Melissa Hillman) to smear the parents, and hence constitutes evidence of the collusion between Tish Taylor and BVSD (and the communications that took place between her attorney and Melissa Hillman, who is originally a medical malpractice lawyer as well). Tish Taylor already showed the father the qualitative comments and the quantitative evaluation results by rater. D.U.'s only raters were parents, and Melissa Hillman, who is a board attorney and who does not know D.U. one bit, was in a sense a secret rater (there is a likelihood that the psychotherapy notes mentioned in Tish Taylor's motion include Melissa Hillman's comments on D.U.). Tish Taylor should explain why she was not worried about Parents retaliating against teachers back then, but she is worried about that now. She should also explain what Parents have done to retaliate against the raters in the last one year.

Finally, the conditions and restrictions Tish Taylor try to attach to the production of the data collection sheets to Parents are aimed at embarrassing and oppressing them. She is in a way letting Parents know their place: she is suggesting that their children's data collection sheets are above Parents' pay grade and beyond their reach, although they are well within the reach of everyone else that participates in the due process hearing, including the entire BVSD team. This sort of attitude is not at all in line with Tish Taylor's style, but very much in line with Melissa Hillman's style. Similarly, an objection to the subpoena would fit better with Tish Taylor's style, but an aggressive motion to quash with embarrassing, oppressive conditions and restrictions is very much the M.O. of Melissa Hillman.

In that regard, Melissa Hillman previously made Parents to write a time-consuming formal

response to the informal, casual discovery requests BVSD made by email. Melissa Hillman even refuses to disclose the emails that Parents' children's teachers sent to each other about the children. Parents are made to provide specific terms (some of which are rejected by BVSD) to narrow down the search, so that what their children's teachers said to each other about their children by email will stay beyond Parents's reach. Moreover, Parents will probably be made to pay for this search, which will be conducted by a vendor of BVSD choice. The vendor might conveniently lose some of the emails during the search. Overall, although the *Motion to Quash* has Tish Taylor's lawyer's signature on it, it has Melissa Hillman's imprint all over it.

WHEREFORE, Parents requests the Hearing Officer to compel Tish Taylor to produce the data collection sheets for this due process hearing without conditions or restrictions, as well as to sanction Melissa Hillman to deter her from embarrassing and oppressing Parents.



Name: Tolga Ulusemre
Address: 13982 W 147th St
City, State Zip: Olathe, KS 66062
Telephone: 912-481-8074
Email: tulusemre@gmail.com

CERTIFICATE OF SERVICE

On September 5, 2024, I emailed a true and correct copy of this Motion and Notice of Hearing to the people listed below, at the email addresses stated:

Stephanie Lovett-Bowman
Madison A. Perry
slovettbowman@spencerfane.com
mperry@spencerfane.com
Attorneys for Blue Valley U.S.D. 229

Melissa Hillman
mhillman@bluevalleyk12.org
Chief Legal Officer of Blue Valley U.S.D. 229

Angela Gupta
angela@adrmediate.com
Hearing Officer

Dawn Dawson
dawn@adrmediate.com
Case manager for the Hearing Officer

Anne Kindling
Akindling@josephhollander.com
Attorney for Tish Taylor


