

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No's. CR-1997-2008**
 : **CR-2072-2008**
LEON DALE BODLE, :
Defendant :

OPINION AND ORDER

Before the Court is the Commonwealth's Motion to Quash Subpoenas filed by R.B. (hereinafter "Movant"). Movant is the natural mother of L.B. (hereinafter "child"). Defendant is charged with crimes allegedly involving the child. Defendant issued subpoenas on both the Williamsport Area School District and Hepburn-Lycoming Elementary School seeking any and all records concerning L.B. Hepburn-Lycoming Elementary School is a school within the Williamsport Area School District.

Movant requests the Court to Quash the Subpoenas submitting that under the circumstances the requested documents are not relevant. Specifically, Movant argues that by prior Order of Court dated February 8, 2010, L.B. was found to be unavailable to testify during trial and that the Commonwealth will be permitted to use L.B.'s recorded testimony. Furthermore, by Order of Court dated February 8, 2010, L.B.'s statements to various individuals were deemed admissible as exceptions to the hearsay rule pursuant to 42 Pa. C.S. § 5985.1. Accordingly, any records would be irrelevant.

Additionally, Movant argues that the Subpoenas should be quashed because the requested documents would violate L.B.'s privacy rights and are absolutely privileged.

Argument was held on the Motion to Quash Subpoena on March 29, 2010. Present for the argument were Defendant, Defendant's attorney, Movant, Movant's attorney, the Commonwealth and the Solicitor for the Williamsport Area School District. Following the

argument, the Court requested the parties to provide it with case and statutory citations relevant to the issues. The Court determined that it would review the records in camera and make an appropriate determination. By letter dated March 31, 2010 to the parties and their counsel, the Court requested copies of the subpoenaed documents as well as any case and statutory citations. The School District provided the documents along with statutory citations although neither the Movant or Defendant provided any case or statutory authority.

Defendant submits that the subpoenaed documents are relevant to his right to impeach the credibility of L.B. as well as his right to a fair trial. The statutory protections for certain documents, however, outweigh the Defendant's right to cross-examine or to due process. Specifically, documents that are confidential and protected by the statutory privileges set forth in 42 Pa. C.S. § 5944 and § 5945 are paramount. Commonwealth v. Dowling, 883 A.2d 570 (Pa. 2005).

In conformance with these statutes, the Court will not permit the release of any documents reflecting, concerning or relating to: (1) any information acquired by any psychiatrist or licensed psychologist in the course of his or her professional services on behalf of the child; or (2) any information acquired from the child student in confidence by any guidance counselor, school nurse, school psychologist or home or school visitor. 42 Pa. C.S. §5944; 42 Pa. C.S. § 5945.

The Court has received and reviewed in camera the records compiled by the School District which include the child's cumulative record kept at the Hepburn-Lycoming Elementary School and a file kept at the District Service Center. In reviewing the documents,

the Court cannot conclude given the circumstances, that any of the reviewed documents, privileged or otherwise, are substantially relevant.

Given, however, the Defendant's rights to due process and a fair trial, the Court will deny, in part, the Movant's Motion and require the District to provide to Defendant, within ten (10) days of the date of this Order, copies of the following documents which the Court deems to be minimally relevant and not privileged:

- (1) May 8, 2007, October 11, 2007, October 25, 2007, November 1, 2007 and November 6, 2007 letters to L.B.'s parents from Gary B. Gonsar, Elementary Principal.
- (2) Seven-page typewritten behavior documentation of L.B. by Lisa A. Wagner.
- (3) One-page observations of L.B. by Dana Null dated October 16, 2007.
- (4) Williamsport Elementary School's mid-term progress report (undated);
and
- (5) Undated notice from Child Protective Services.

The Court will not permit the release of any other documents. More specifically, the Court will not release any of the I.E.P. documents, any behavioral assessments, any neuropsychological assessments, any documents forwarded to the school psychologist or any notes by the school psychologist regarding L.B. The Court does note that in reviewing the documents in camera, there are no documents whatsoever that reference the Defendant or any alleged misconduct by the Defendant.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: James Protasio, Esquire
DA (Mary C. Kilgus, Esq.)
Fred Holland, Esquire
Joel McDermott, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File