

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
Fusion Learning, Inc.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 21-11059-MJJ
)	
Andover School Committee and)	
Town of Andover)	
)	
Defendants.)	
_____)	

MEMORANDUM OF DECISION

November 17, 2023

JOUN, D.J.

This case arises out of Defendants Andover School Committee (“ASC”) and Town of Andover’s (“Town” and with ASC, “Defendants”) denial of Plaintiff Fusion Learning Inc.’s (“Fusion”) applications to own and operate a private school in Andover. [Doc. No. 54]. Fusion alleges violations of 42 U.S.C. §1983 and Title II of the Americans with Disabilities Act.¹ [*Id.*]. Pending before this Court is Defendants Motion for Reconsideration. [Doc. No. 87]. Defendants request the Court reconsider its November 1, 2023 Order, [Doc 86], granting Fusion’s Motion to Compel. [Doc. No. 87].

Defendants argue the documents ordered produced relating to home school applications are not relevant, the production of such documents would constitute an irreparable invasion of privacy to a multitude of non-parties, and that the original Motion to Compel was not filed in a

¹ Fusion also seeks a declaration pursuant to 28 U.S.C., § 2201 that its applications satisfied the requirements of M.G.L. c. 76, §1.

timely manner. Fusion refutes these claims and argues Defendants' assertions do not conform to the three bases for a court to reconsider a prior order. For the following reasons, the Motion for Reconsideration is DENIED.

I. DISCUSSION

A. Standard of Review

Granting a motion for reconsideration is "an extraordinary remedy which should be used sparingly." *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006). To obtain relief, the movant must demonstrate "newly discovered evidence," "an intervening change in law," or a "manifest error of law." *U.S. v. Allen*, 573 F.3d 42, 53 (1st Cir. 2009).

B. Analysis

Defendants first argue the Court, in granting Fusion's Motion to Compel, relied on a misunderstood premise that Fusion's use of a one-to-one teacher-to-student ratio model was a consideration in its denial of Fusion's applications. Contrary to this premise, Defendants argue Fusion's one-to-one model was not a consideration for the ASC. Thus, Fusion's requested home schooling applications, which similarly follow a one-to-one model, are irrelevant to Fusion's claims.

While the one-to-one model was not a dominant factor evidenced in the recommendations to deny Fusion's applications and ASC's meeting minutes, the one-to-one model was considered. For example, in its first recommendation to deny, the Assistant Superintendent for Teaching and Learning stated there were "no known opportunities for peer dialogue in a 1:1 setting at Fusion." [Doc. 87-1]. Furthermore, one ASC member appreciated "that a one-to-one role could work for some students." [Doc. 87-2]. The one-to-one model was

also discussed in the context of the number of teachers available at Fusion’s proposed school and in the context of the deliverable range and volume of courses. [Doc. No. 87-3].

Furthermore, as Defendants have acknowledged, home school applications and private school applications are both governed by M.G.L. c. 76, §1. M.G.L. c. 76, § 1, specifically provides that, “school committees shall approve a private school when satisfied that the instruction in all the studies required by law equals in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town; but shall not withhold such approval on account of religious teaching....” Thus, the standard for approving home school and private school applications are the same, demonstrating relevance to Fusion’s claims.

Even if, as Defendants contend, applications and requirements for home schooling are different than those for private schools,² there is significant overlap in the factors that govern the two processes. For example, for home schooling applications, either the superintendent or the school committee will review the proposed curriculum and the number of hours of instruction in proposed subjects when determining whether to approve an application. Throughout the approval process for Fusion’s applications, ASC referenced the amount of time learning as a key issue in its determination. Thus, even if the approval processes are not identical for home school and private school applications, Fusion has demonstrated their similarities to justify the Court’s November 1, 2023 Order. Defendants have not established a clear error of law.

Defendants also argue Plaintiff’s requests are an undue invasion of privacy. Contrary to Defendants’ assertion, the November 1, 2023 Order limits production to five random student

² For example, Defendants state assessment of home school applications is much less formal compared to private school applications, home school and private school applications have different requirements for reapplication, auditing and issues relating to public health and facilities, home school applicants are entitled to a greater level of response during the approval procedure, and home school applicants can operate without school committee approval.

applications for home schooling and excludes any medical and/or financial documentation submitted in support of an application. Furthermore, the applications are to be redacted of any personal identifying information, all information related to any medical conditions, all personal identifying information for any medical provider and/or treatment condition. Thus, the November 1, 2023 Order is sufficiently proportional and does not constitute an undue invasion of privacy.³

II. CONCLUSION

For the foregoing reasons, Defendants Motion for Reconsideration is DENIED. This Order includes a revised Notice to be sent to the parents/family of the students whose records have been selected for production.

SO ORDERED.

/s/ Myong J. Joun
United States District Judge

³ Defendants also argue Fusion's application was untimely. Here, Fusion filed its Motion to Compel discovery on the deadline for fact discovery, October 31, 2023. Thus, Fusion's application was timely. *See Burgos-Martinez v. City of Worcester*, 345 F.Supp.3d 105, 107 (D. Mass. Dec. 14, 2018).



PIERCE DAVIS & PERRITANO LLP

10 Post Office Square, Suite 1100N, Boston, MA 02109
Phone: 617.350.0950 | Fax: 617.350.7760

Adam Simms, Es.
asimms@piercedavis.com
Jeffrey J. Trapani, Esq.
jtrapani@piercedavis.com
Colleen Howard, Esq.
choward@piercedavis.com

IMPORTANT NOTICE REGARDING YOUR HOME SCHOOLING RECORDS

PLEASE DO NOT DISCARD

November [REDACTED], 2023

**VIA CERTIFIED MAIL, R/R/R
VIA REGULAR MAIL**

[REDACTED]
[REDACTED]

Re: *Fusion Learning, Inc. v. Andover School Committee and the Town of Andover*
U.S. District Court, District of Massachusetts, Civil Action No. 1:21-cv-11059-MJJ

[REDACTED]:

This firm represents the Town of Andover (the “Town”) and the Andover School Committee (“ASC,” and with Town, “Andover”) in the above-referenced civil action (the “Action”), which was filed by Fusion Learning, Inc. (“Fusion”) with the United States District Court for the District of Massachusetts in Boston.

Although Andover has objected to the production of the Home School Records, on November 1, 2023, United States District Judge Myong J. Joun ordered Andover to produce to Fusion a random selection of five applications for home schooling from the school years, 2018-2019, 2019-2020, and 2020-2021, and produce “all documents related to the review and approval of those applications from the time the application was received through the time of decision, excluding any medical and/or financial documentation submitted in support of an application” (the “Home School Records”). The Order also provided that certain information from the Home School Records would be omitted or redacted from the production, i.e., any personal identifying information (names, addresses, telephone numbers, student ID numbers etc.), medical (including mental, psychological, emotional, and social conditions), and financial information (including all personal identifying information for any medical provider and/or treatment location).

A copy of the Order is enclosed herein.

Your child’s application has been selected as a result of the Order and a copy of the records that Andover will produce to comply with the Order is enclosed herewith for your records.

Please be advised that this correspondence constitutes Andover’s notice to you in compliance with the applicable Massachusetts regulation, 603 CMR 23.07(4)(b), which states that “[u]pon receipt of a court order or lawfully issued subpoena the school shall comply, provided that the

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school makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.”

If you want to respond or make any objections to the production of your Home School Records pursuant to this Order, you may do so by contacting the Court by email at the following:

Judge Myong J. Joun, c/o Steve York, Courtroom Clerk
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2300
Boston, Massachusetts 02210

Email to: Steve York, Clerk, at steve_york@mad.uscourts.gov

Copy email to: Colleen Howard, Esq., at choward@piercedavis.com

Refer to Docket No.: 1:21-cv-11059-MJJ

Please note that if the Court elects to hold a hearing with respect to your objection, the hearing will likely be open to the public.

We expect that your Home School Records will be produced in accordance with the Order on or about December 1, 2023, unless Andover is instructed otherwise by the Court.

Very truly yours,

PIERCE DAVIS & PERRITANO LLP

Adam Simms
Jeffrey J. Trapani
Colleen Howard

JJT/
Enclosure