

**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS  
BUREAU OF SPECIAL EDUCATION APPEALS**

---

In Re: Nalini<sup>1</sup>

&

BSEA #1906261

Nashoba Regional School District

---

**RULING ON SCHOOL'S MOTION TO DISMISS**

The Motion of the Nashoba Regional School District (hereinafter "Nashoba" or School) to Dismiss the Parents' appeal has an unusual presentation which requires a more thorough than usual discussion of the undisputed facts and procedural history of this matter.

**STUDENT PROFILE<sup>2</sup>**

1. Nalini is a fifteen year old young woman with a lifelong history of explosive behavioral dysregulation. Her diagnoses include: Generalized Anxiety Disorder, Social Anxiety Disorder, Social Communication Disorder, Recurrent Major Depressive Disorder, Obsessive-Compulsive Disorder, Attention-Deficit Hyperactivity Disorder, Autism Spectrum Disorder, Bipolar Disorder and Executive Dysfunction. Since age seven Nalini has had multiple psychiatric hospitalizations.
2. Nalini was found eligible for special education services in June 2015 when she was in the 4<sup>th</sup> grade. Evaluations determined that Nalini's general intellectual functioning exceeded the average range and that her overall academic achievement was consistent with her measured cognitive potential. Based on her behavioral presentation, threats of, and actual, self-harm, refusal to engage in school activities and her interfering compulsive rituals, an IEP was developed to address Nalini's social-emotional needs.
3. Nalini is eligible for child services through the Department of Mental Health.
4. Nalini cycled through in-district inclusion and substantially separate special education programs, extended evaluations in out-of-district facilities, psychiatric day placements and

---

<sup>1</sup> "Nalini" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

<sup>2</sup> Facts set out here are taken primarily from the Parents' original Hearing Request and, though not proved at hearing, are considered true solely for the purpose of this Motion.

psychiatric hospitalizations. In March 2017 the Parents unilaterally placed Nalini at Asheville Academy for Girls, an out-of-state, therapeutic, residential school.

5. Asheville Academy for Girls discharged Nalini on May 1, 2018 due to her dangerously aggressive behaviors. It recommended continued placement in a residential special education school.

6. Nashoba arranged an out-of-district therapeutic day placement, Summit Academy, for Nalini up her return from Asheville. She attended six days.

7. Nalini was hospitalized in August 2018. The Department of Mental Health offered to place Nalini in a short term assessment and rapid re-integration program (“STARR”) with a connection to a therapeutic day educational program after her discharge from the hospital. Though Nalini entered the STARR residence on October 2, 2018 she was unable to attend the school next door.

8. Nalini entered a hospital-based day program for OCD specific treatment on October 29, 2018. She was discharged on January 10, 2019 after making insufficient progress in the program.

9. At a Team meeting held on January 29, 2019 Nashoba proposed placing Nalini in an out-of-district therapeutic day program. The Parents rejected the proposed IEP and sought placement in a residential, therapeutic special education program. Nalini did not attend school after her discharge from the OCD program though she was offered home-based tutoring services.

#### PROCEDURAL BACKGROUND

1. The Parents filed a Request for Hearing on January 31, 2019 seeking a finding that Nalini required immediate placement in a residential therapeutic school program. They also sought findings that the IEPs proposed by Nashoba between January 2017 and January 2019 did not provide a free appropriate public education to Nalini, that the parents’ unilateral placement at Asheville Academy for Girls was appropriate for Nalini and that the Parents were entitled to reimbursement of expenses associated with that placement and an award of attorneys’ fees.

2. The assigned date for the Hearing was March 6, 2019. The Parties met for a prehearing conference on February 28, 2019. They agreed to postpone and bifurcate the Hearing. The immediate placement issue was set for Hearing on March 21, 2019. The compensatory claims were set for Hearing on April 24, 2019. The School’s Motion to Join the Department of Mental Health (“DMH”) to the proceedings was GRANTED.

3. The Parties reached an interim agreement governing the Parents’ request for a residential educational placement. Nalini entered the Dr. Franklin Perkins School, a residential therapeutic educational program, for an extended evaluation. The costs of the placement were shared by DMH and Nashoba. The Parties jointly requested postponement of the two hearing dates.

4. On April 30, 2019 the Hearing was re-scheduled to July 11, 23 & 24, 2019. Sometime thereafter the Parties reached an agreement concerning the Parents' 2017-2019 compensatory claims. The issue remaining for resolution at Hearing was whether Nalini currently required a therapeutic residential educational setting in order to receive a free appropriate public education. On July 10, 2019 the Motion of DMH to postpone the Hearing was granted over the objection of the Parents. During a conference call held to discuss the postponement request, Nashoba and DMH committed to continuing Nalini's residential placement at the Dr. Franklin Perkins School until a BSEA decision on the substantive merits of the Parents' current claims had been issued. The Hearing was re-scheduled to October 15, 17 & 18, 2019.

5. During the summer 2019, Nalini began refusing to attend the day educational component of the Dr. Franklin Perkins program. At the end of September 2019 Nalini was removed to a psychiatric hospital where she remained at the time of the scheduled Hearing.

6. On October 15, 2019, before the Hearing commenced, Nashoba offered the Parents an IEP calling for Nalini's placement in a residential, therapeutic educational program. DMH was then dismissed as a party. The School's Motion to Dismiss the Parent's remaining special education claims as moot was granted as to their request for prospective relief, placement in a residential therapeutic school, and denied as to their claims for compensatory relief for failure to provide a free appropriate public education between the end of the extended evaluation period and Nalini's subsequent hospitalization.

7. The Hearing proceeded on the Parents' compensatory claims on October 17 & 18, 2019. The testimony of two additional parent witnesses remained to be scheduled. Before they could be heard the Parents withdrew all remaining issues from BSEA consideration, requesting only a written ruling on the School's October 15, 2019 Motion to Dismiss the Parents' claim for prospective relief.

## LEGAL FRAMEWORK

The BSEA is the entity charged with conducting due process hearings involving the interpretation and implementation of the IDEA, 20 U.S.C. 1400 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 20 U.S.C. §794, and the Massachusetts Special Education Statute, M.G.L. c71B. To carry out its function the BSEA follows the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01, which is based upon and appropriately adapted from the Massachusetts and Federal Rules of Civil Procedure.

Under 801 CMR 1.01 (7), and Rule VI of the BSEA Hearing Rules, a Hearing Officer may allow a motion to dismiss if the party requesting the appeal fails to state a claim on which relief can be granted. Since this Rule is analogous to Rule 12(b) (6) of the Federal and Massachusetts Rules of Civil Procedure, BSEA hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim. Specifically, a hearing officer must consider as true all facts alleged by the party opposing dismissal (in this case, the Parents) and should not dismiss the case if those facts, if proven, would entitle the non-moving party to relief that the BSEA has authority to grant. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), *Ocasio-Hernandez v. Fortunato-Burset*, 640 F.3<sup>rd</sup> (1<sup>st</sup> Cir. 2011).

Furthermore, Rule 12(h)(3) of the Federal Rules of Civil Procedure explains that “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Mootness deprives a reviewing tribunal of jurisdiction. To consider an appeal for relief parties must present the tribunal with an identifiable dispute. U.S. Const. art. III, §2, cl. 1. For a case to be justiciable, “an actual controversy must exist at all stages of appellate review, and not simply at the date the action is initiated.” *Roe v. Wade*, 410 U.S. 113, 125, 93 S.Ct. 705, 712, (1973). Thus, if a matter is rendered moot at any point in time during the litigation process, the presiding venue lacks subject matter jurisdiction and the matter must be dismissed.

## DISCUSSION

While it is not common for the BSEA to consider a claim of mootness it does happen from time to time that one or more issues in a complex case are resolved by a change of circumstances or the passage of time during the prosecution of an appeal. *See e.g.: CBDE Public Schools*, 17 MSER 43 (2011). In this matter, most of the Parents’ claims had been resolved by the time the first day of hearing arrived. Two issues remained: Whether Nalini currently required placement in a residential, therapeutic special education school in order to receive a free appropriate public education; and Whether Nalini was entitled to receive compensatory educational services as a result of Nashoba’s failure to offer an appropriate residential special education program during the time between the expiration of the formal extended evaluation period in June 2019 and her hospitalization in September 2019. The Parents’ Hearing Request sought “A finding that [Nalini] requires immediate placement in a residential therapeutic school program” as well as an Order to send application packets to three named schools and others. The schools named in the Hearing Request included the Dr. Franklin Perkins School in which, at the time of the Hearing, Nalini was still enrolled.

On the first day of hearing Nashoba presented the Parents with an IEP incorporating the findings and recommendations of their expert evaluators and designating a residential program as the placement in which Nalini would be educated. The School thus fully met the Parents’ first request for relief. The BSEA could not order any more complete, and certainly not more immediate, relief than the School’s proffered IEP. The School having admitted that Nalini requires a residential therapeutic special education program in order to receive a free appropriate public education, and having committed to providing one, no actual controversy or difference of position then existed between the School and the Parents. That is the textbook definition of mootness.

The Parents argue, however, that the School’s proffered residential IEP is procedurally defective and thus cannot constitute a proper basis for dismissal. They correctly point out that the October IEP does not meet all the IDEA’s notice and participation requirements.<sup>3</sup> Nevertheless it contains the requisite substantive elements to permit an immediate parental decision and the associated school placement the Parents had sought in their Hearing Request. I

---

<sup>3</sup> I note, however, that a BSEA finding that an immediate residential placement is warranted would lack those same procedural niceties and would, of necessity, prolong resolution of the dispute and delay, both procedurally and substantively, the resulting educational placement.

find, therefore, that the IEP offered by the School meets the Parents' request for prospective relief and moots the prospective claim they brought to the BSEA.

The Parents also argue that the School's "last minute" IEP offer was deviously designed to evade the IDEA's attorneys' fees provisions and should be disregarded as against public policy. 20 U.S.C. 1415 (i) (3); 34 CFR 300.517. I decline to impute such a nefarious motive to the School. It is more likely that the Student's changed circumstances, combined with a critical review of the documentary evidence submitted five days in advance of the hearing, led to the School's change in position.

After careful consideration of the Parties' arguments on October 15, 2019, and reconsideration now, I am persuaded that this matter lacks any universal or time-sensitive elements which might argue against dismissal for mootness. *Honig v. DOE*, 484 U.S. 305 (1988); *Baisden v. Secondary Schools, Activities Commission*, 568 S.E. 2d 32 (W. Va. 2002).<sup>4</sup> There being no active dispute between the Parties about the appropriate special education program and placement for Nalini at this time, the Parents' prospective claim for relief through the BSEA is moot. There is no relief the BSEA can order which has not already been secured by the Parents. 801 CMR 1.01 (7).

Turning to the remaining compensatory claim, the School's October 15, 2019 offer of prospective placement in a residential educational setting does not moot the Parents' request for retroactive relief. Therefore, that sole claim, covering the period June-September 2019, remained ripe for Hearing on October 15, 2019.

## ORDER

The School's Motion to Dismiss as Moot the Parents' Hearing Request insofar as it seeks prospective placement in a residential therapeutic school is GRANTED. To the extent the School's Motion to Dismiss can be read to apply to any potential parental claims that may have arisen during the period June through September 2019, the Motion is DENIED.

By the Hearing Officer

---

Lindsay Byrne  
Dated: November 26, 2019

---

<sup>4</sup> Factors to be weighed in assessing claims of mootness are: collateral consequences of considering a claim that may justify additional relief, great public interest requiring future guidance, and capacity for repetition evading review. *Baisden, supra*.