

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

In Re: Easthampton Public Schools

BSEA #2203513

**RULING ON PARENTS' MOTION TO AMEND THE RESPONSE TO THE HEARING
REQUEST**

This matter comes before the Hearing Officer on *Parents' Motion to Amend the Response to the Hearing Request (Motion)* filed with the BSEA on March 8, 2022. In it, Parents seek to amend their response to the hearing request of the Easthampton Public Schools (the District) in order to seek reimbursement for the cost of two privately obtained evaluations from 2019. On the same day, the District filed its *Motion in Opposition to Motion to Amend the Response to the Hearing Request (Opposition)*. In it, the District argued that “by asking to include [this issue for hearing] they are essentially counter-claiming the District’s hearing request” and that it would be “highly prejudicial to the District to allow a counter-claim to be filed 6 business days prior to the start of the hearing (and the day before exhibits are due) but, if the claims were allowed they would be subject to a motion to dismiss because they fall outside of the IDEA’s two year statute of limitations.”

Neither party has requested a hearing on the *Motion*. Because neither testimony nor oral argument would advance the Hearing Officer’s understanding of the issues involved, this Ruling is issued without a hearing, pursuant to *Bureau of Special Education Appeals Hearing Rule VII(D)*.

For the reasons articulated below, the *Motion* is **DENIED**.

RELEVANT FACTS AND PROCEDURAL HISTORY

The following facts are not in dispute and are taken as true for the purposes of this *Ruling*. These facts may be subject to revision in subsequent proceedings.

1. Student is a student with an undisclosed disability attending the Easthampton Public Schools.
2. In April 2021, the District completed a three-year reevaluation of Student. A Team meeting was scheduled for June 2021 to review the results of the assessments. Parents cancelled the meeting.
3. On August 20, 2021, Parents requested an independent Neuropsychological Evaluation. The District responded to that request by filing a hearing request, which was subsequently withdrawn after the Student enrolled at Greenfield Virtual Academy.
4. On September 13, 2021, Student re-enrolled in the District, and the District attempted to reschedule the Team meeting to review the results of the three-year reevaluation. The meeting was scheduled for November 19, 2021.

5. On October 29, 2021, Parents requested public funding for independent neuropsychological and psycholinguistic evaluations.
6. On November 3, 2021, the Easthampton Public Schools filed a Request for Hearing seeking an order denying Parents' request for independent neuropsychological and psycholinguistic evaluations. The District asserted that Parents "have no right to receive public funding for independent evaluations because [they] state [they] disagree with the findings of the District's three-year re-evaluation until after the Team has met to review those evaluation[s]." The District also asserted that its evaluations are "comprehensive and appropriate and that the parents have already had a private evaluation completed in October 2019."
7. On November 15, 2021, Parents responded asserting that they had "confirm[ed] in writing" that they had "received [the District's psychoeducational, education, speech and language, occupational therapy, and physical therapy evaluations]..., have reviewed them, understand the results, and disagree with them." Parents asserted that "a request for independent evaluations is made in direct disagreement and concern with the results of the reevaluation conducted in 2021" and that Parents

"continue to find a significant difference between the results reported by [the District's] evaluations and the results obtained in previous independent evaluation. The differences are not limited solely to diagnoses that support a learning disability in language. Rather Parents also find that they do not agree with the levels of progress presented by the school.... An updated independent evaluation will complement the information on [Student's] progress and profile. In the same manner, it will allow Parents to participate effectively during upcoming meetings with the Special Education Team."

In addition, Parents asserted that the District denied "access to independent, publicly charged evaluations[, failed] to provide adequate contact information for referrals, retraction of approvals, and [failed] to request hearings regarding Parents' request for independent evaluations." In part, Parents sought "to prevent the District from continuing to propose convening Special Education meetings that preclude adequate parental involvement."¹

8. On March 8, 2022, Parents filed the instant *Motion* seeking to amend their November 15, 2021 Response to the Request for Hearing in order to seek reimbursement for the cost of two privately obtained evaluations from 2019.
9. In response, on March 8, 2022, the District filed its *Opposition* asserting that "by asking to include [this issue for hearing, Parents were] essentially counter-claiming the District's hearing request" and that it would be "highly prejudicial to the District to allow a counter-claim to be filed 6 business days prior to the start of the hearing (and the day before exhibits are due)." The District also argued that "if the claims were allowed they

¹ On page 4 (second paragraph) of Parents' Response to the District's Request for Hearing, Parents assert that they have been denied meaningful participation at Team meetings. However, parents had not participated in any IEP meetings following the 2021 evaluations and prior to the filing of Parents' Response on November 15, 2021.

would be subject to a motion to dismiss because they fall outside of the IDEA’s two year statute of limitations.”

10. A Hearing in the above-referenced matter is scheduled to begin on March 16, 2022.

LEGAL STANDARD

1. Amending a Response to a Request for Hearing

The IDEA requires the party initiating a due process hearing to file a complaint and provide notice of this complaint to the other party and the state educational agency. In part, the complaint must include a description of issue(s), including facts relating to such issue(s) and a proposed resolution to the dispute, to the extent known and available to the party at the time.² The IDEA further specifies that “the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.”³ Both the hearing request and the response thereto provide the opposing party with notice as to the issues for hearing. A party requesting a hearing may not “raise issues at the hearing that were not raised in the hearing request unless the other party agrees or the hearing request is amended in accordance with state and federal law.”⁴

20 USC 1415(c)(2)(E)(i) states that

A party may amend its due process complaint notice only if—

- (I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or
- (II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.⁵

The applicable timeline for a due process hearing recommences at the time the party files an amended notice.⁶ BSEA Hearing Rule I(G) similarly states that whenever a Hearing Request is amended, new timelines for the entire process are thereafter calculated, as if the amended hearing request were a new request.

Although the BSEA Hearing Rules do not specifically address amending the response to a request for hearing, but rather only amending the Hearing Request itself, 801 CMR 1.01 addresses amendments to pleadings, generally.⁷ Specifically, 801 CMR 1.01(6)(f) instructs that the “Presiding Officer may allow the amendment of any pleading previously filed by a Party upon conditions just to all Parties, and may order any Party to file an Answer or other pleading,

² See 34 CFR 300.508(b).

³ 34 CFR § 300.508(f).

⁴ BSEA Hearing Rule I(B).

⁵ BSEA Hearing Rule I(G)(2) tracks this language.

⁶ See 20 USC 1415(c)(2)(E)(ii).

⁷ Hearing Officers are bound by the *BSEA Hearing Rules for Special Education Appeals* (Hearing Rules) and the Standard Rules of Adjudicatory Practice and Procedure, 801 Code Mass Regs 1.01.

or to reply to any pleading.” Because 801 CMR 1.01 fails to define “conditions just to all Parties,” I turn to the Federal Rules of Civil Procedure for guidance.

Rule 15 of the Federal Rules of Civil Procedure provides that “a party may amend its pleading [with] the court’s leave” and that “[t]he court should freely give leave when justice so requires.”⁸ Thus, the court has the discretion to grant or deny a request for leave to file an amended pleading, and leave to amend must generally be granted unless equitable considerations render it otherwise unjust.⁹ Amendments “may be denied on the basis of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.”¹⁰ In determining whether to grant a motion to amend, the Court must examine the totality of the circumstances and “exercise its informed discretion in constructing a balance of pertinent considerations.”¹¹

2. *Statute of Limitations*

Under the IDEA, a due process complaint is timely if filed within two years of the date that the parent or district knew or should have known about the action forming the basis for the complaint.¹² The two-year statute of limitations period does not apply to a parent if the parent was prevented from filing a due process complaint due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process complaint; or the school district’s withholding of information from the parent that was required under this part to be provided to the parent.¹³

BSEA Hearing Rule 1(G) provides that to the extent an amendment to a hearing request merely clarifies issues raised in the initial hearing request, the date of the initial hearing request shall be controlling for statute of limitations purposes. For issues not included in the original hearing request, however, the date of the amended hearing request is controlling for statute of limitations purposes.¹⁴

3. *Legal Standard for Motion to Dismiss.*

Pursuant to Rule XVII A and B of the *Hearing Rules* and 801 CMR 1.01(7)(g)(3), a hearing officer may allow a motion to dismiss if the party requesting the hearing fails to state a claim upon which relief can be granted. These rules are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As such, hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim. To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an

⁸ Fed. R. Civ. P. 15(a)(2).

⁹ *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962)

¹⁰ *The Hilsinger Co. v. Kleen Concepts, LLC*, 164 F. Supp. 3d 195, 198 (D. Mass. 2016) (internal quotations and citations omitted).

¹¹ *Palmer v. Champion Mortg.*, 465 F.3d 24, 30–31 (1st Cir.2006).

¹² 34 CFR 300.507(a)(2).

¹³ See 34 CFR 300.511(f).

¹⁴ BSEA Hearing Rule I(G).

entitlement to relief.”¹⁵ The hearing officer must take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff’s favor.”¹⁶ These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”¹⁷

APPLICATION OF LEGAL STANDARD

In the instant matter, the District is correct that Parents’ *Motion* raises new issues for Hearing in the above-referenced matter. Specifically, Parents’ November 15, 2021 Response to the District’s November 3, 2021 Request for Hearing outlines Parents’ position relative to their request for IEEs resulting from the District’s April 2021 three-year reevaluation of Student.¹⁸ Now, Parents’ *Motion* seeks reimbursement for two privately obtained evaluations from 2019. These new claims for relief do not “merely clarify”¹⁹ issues raised in Parents’ November 15, 2021 Response; rather, they are distinct and separate counter-claims. As such, these counter-claims, if I were to allow them to be pursued at this time, would require a new timeline.²⁰ In light of the fact that the Hearing is scheduled to begin on March 16, 2022, this would cause undue delay as well as prejudice to the District, especially since exhibit books and witness lists are due today, March 9, 2022.

The District is also correct that even if I were to allow Parents’ *Motion*, the additional claims would be “subject to a motion to dismiss because they fall outside of the IDEA’s two year statute of limitations.” Because Parents have not asserted that either exception to the statute of limitations applies here,²¹ even if I were to take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the [Parents’] favor,”²² I could not find in the present matter that there exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”²³

Hence, at this time, amending Parents’ Response would be “futile,”²⁴ and the denial of said claims would not cause any prejudice to Parents. However, should Parents wish to assert otherwise, the additional claims regarding the 2019 privately obtained evaluations are hereby dismissed without prejudice.

¹⁵ *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

¹⁶ *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995).

¹⁷ *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted).

¹⁸ Parents’ November 15, 2021 Response also alleged procedural violations on the part of the District relative to Parents’ request for IEEs. Although Parents utilized general terms in describing the District’s violations, they did not assert or imply that they were seeking relief relative to any IEE requests other than those resulting from the April 2021 re-evaluation.

¹⁹ See BSEA Hearing Rule I(G).

²⁰ BSEA Hearing Rule I(G).

²¹ See 34 CFR 300.511(f).

²² *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995).

²³ *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

²⁴ *The Hilsinger Co. v. Kleen Concepts, LLC*, 164 F. Supp. 3d 195, 198 (D. Mass. 2016) (internal quotations and citations omitted).

Therefore, Parents' *Motion* is **DENIED**.

CONCLUSION AND ORDER

For the reasons articulated above, Parents' *Motion* is **DENIED**. Parents' claims seeking reimbursement for two 2019 privately obtained evaluations are dismissed without prejudice.

1. The Hearing will take place via a virtual platform on March 16 and 17, 2022. The Hearing will proceed on the following issues:
 - a. Whether the psychoeducational, education, speech and language, occupational therapy, and physical therapy evaluations conducted by the District in April 2021 were appropriate under the standards set forth in the IDEA such that Student is not entitled to independent educational evaluations (IEEs) at public expense in those areas?
 - b. Whether the District failed to follow the procedural requirements of 34 CFR § 300.502(2) and 603 CMR 28.04(5) in response to Parent's October 29, 2021 request for independent neuropsychological and psycholinguistic evaluations?²⁵
 - i. If the answer to (b) is "yes," then did the District's failure to follow said procedures result in a denial of a free and appropriate public education (FAPE) to Student?
 - ii. If the answer to (b)(1) is "yes," then what is the appropriate remedy?

So Ordered by the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir

Dated: March 9, 2022

²⁵ This issue is derived from page 3 (last paragraph) of Parents' Response to the District's Request for Hearing. Where a parent proceeds *pro se*, a pleading should be construed liberally. *See Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997). As the First Circuit explained in the context of summary judgment, "[t]he policy behind affording pro se plaintiffs liberal interpretation is that if they present sufficient facts [to state a claim], the court may intuit the correct cause of action, even if it was imperfectly pled." *Id.* This principle aligns with "[o]ur judicial system [, which] zealously guards the attempts of pro se litigants on their own behalf" while not ignoring the need for compliance with procedural and substantive law. *Id.*