

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

In Re: Student

&

BSEA #2203555

Springfield Public Schools

**RULING ON SPRINGFIELD PUBLIC SCHOOL'S MOTION TO
DISMISS/MOTION FOR SUMMARY JUDGMENT RELATIVE TO PARENT'S
AMENDED HEARING REQUEST**

On April 8, 2022, with the permission of the hearing officer, Parent filed an Amended Hearing Request in which she alleged that Springfield had (1) deprived Parent of reasonable accommodations for her disability to which she was entitled under the Americans with Disabilities Act (ADA) and (2) unlawfully disclosed confidential student information. On April 25, 2022, Springfield filed a *Motion to Dismiss or for Summary Judgment* with respect to the claims in the Amended Hearing Request on the grounds that the Bureau lacks jurisdiction to adjudicate them; therefore, Parent has failed to state a claim on which relief can be granted. Alternatively, Springfield argues that there is no dispute of material fact, and the District is entitled to summary judgment in its favor as a matter of law.

Parent filed a response thereto on May 16, 2022.¹ With respect to her claim that she was denied reasonable accommodations for her disability, Parent argues that at a meeting to discuss Student's IEP, Springfield prevented her from using a "memory aid" device, an accommodation that she needs in order to participate in the meeting. Parent asserts by preventing her from using the device, the District discriminated against her on the basis of her disability and prevented both her and Student from fully participating in the educational planning process. Parent further argues that Springfield's actions were intentional and retaliatory. Parent relies on the IDEA, Section 504 of the Rehabilitation Act, and the ADA to support this claim.

Regarding the claim of Springfield's breach of confidentiality, Parent contends that the breach at issue violated provisions of the IDEA governing privacy of student information, and, therefore, is within the jurisdiction of the BSEA.

¹ Parent requested and was granted an extension of time to respond to the *Motion*.

LEGAL STANDARD FOR RULING ON A MOTION TO DISMISS

The BSEA may dismiss a claim if it lacks jurisdiction, or if the non-moving party fails to state a claim upon which relief may be granted. *Hearing Rules for Special Education Appeals*, Rule XVI.B; *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3). These provisions are analogous to Rule 12(b)(6) of the Federal and Massachusetts Rules of Civil Procedure. While not directly applicable to proceedings before the BSEA, hearing officers at the Bureau look to this rule for guidance when considering motions to dismiss.

In determining whether to dismiss a claim, a hearing officer must consider as true all facts alleged by the party opposing dismissal. The hearing officer should not dismiss the case if the facts alleged, if proven, would entitle the non-moving party relief that the BSEA has authority to grant. *Caleron-Ortiz v. LaBoy-Alvarado*, 300 F.3d 60 (1st Cir. 2002); *Ocasio-Hernandez v. Fortunato-Burset*, 640 F.3d. 1 (1st Cir. 2011). A motion to dismiss will be denied if “accepting as true well-pleaded factual averments and indulging all reasonable inferences in the plaintiff’s favor...recovery can be justified under any applicable legal theory.” See *Caleron-Ortiz*, *supra*. The factual allegations must be sufficient to “raise a right to relief above a speculative level on the assumption that the allegations in the complaint are true (even if doubtful in fact.)” *Bell Atlantic v. Twombly*, 550 U.S. 554, 555 (2007).

The entire case may be dismissed only if the hearing officer cannot grant any relief under federal² or state³ special education statutes, or applicable portions of §504 of the Rehabilitation Act.⁴ See *Calderon-Ortiz*, *supra*; *Whitinsville Plaza Inc. v. Kotseas*, 378 Mass. 85, 89 (1979); *Nader v. Citron*, 372 Mass. 96, 98 (1977); *Norfolk County Agricultural School*, 45 IDELR, 26 (2005). Conversely, if the opposing party’s allegations raise the plausibility of a viable claim that may give rise to some form of relief cognizable under any one or more of these statutory provisions, the matter should not be dismissed. See *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948 (2009).

Individual claims must be dismissed, however, if they do not arise under the statutes referred to above. Unlike a court with general jurisdiction, the BSEA may consider only those claims for which enabling statutes and regulations expressly grant authority. See *Globe Newspaper Co. v. Beacon Hill Architectural Comm.*, 421 Mass. 570 (1996). Thus, MGL c. 71B§2A, the Massachusetts enabling statute for the BSEA, limits the Bureau’s jurisdiction to the following:

[Resolution of] disputes between and among parents,
school districts, private schools and state agencies
concerning (i) any matter relating to the identification,

² Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et. seq*

³ M.G.L. 71B

⁴ 29 U.S.C. §794

evaluation, education program or educational placement of a child with a disability or the provision of a free and appropriate public education to the child arising under this chapter and regulations promulgated hereunder or under the Individuals with Disabilities Education Act...and its regulations; or (ii) a student's rights under Section 504 or its regulations."

The state special education regulations implementing MGL c. 71B, at 603 CMR 28.08, track the applicable statutory language. The above-referenced Massachusetts statute and regulations are consistent with the pertinent federal provisions. The IDEA at 20 USC §1415(B)(6), and corresponding regulations at 34 CFR §§300.500-517, also permit parents and/or school districts to request mediations and/or due process hearings "relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child." 34 CFR §300.507(a)(1). Finally, the BSEA has consistently determined that its jurisdiction is confined to making determinations under federal and state special education statutes and §504 of the Rehabilitation Act. See, for example, *Rulings on Motions to Dismiss in Noel & Holyoke Public Schools*, BSEA No. 1606558 (Byrne, August 29, 2016); *Oriel & Holyoke Public Schools*, BSEA No. 1606711 (Byrne, August 29, 2016); and cases cited in both rulings, including *In Re: Springfield Public Schools & Xylia*, 18 MSER 373 (Byrne, 2012); *In Re: Student v. Chicopee Public Schools & DESE*, 23 MSER 1 (Berman, 2017).

Notwithstanding the above, dismissal of an IDEA due process claim must be approached with caution, especially when the party opposing dismissal is appearing *pro se*. As with the Federal Rules of Civil Procedure, the purpose of the pleading rules under the IDEA is to provide fair notice to the opposing party of the nature of the dispute. The U.S. Supreme Court has explained:

The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Leatherman v. Tarrant County NICU*, 507 U.S. 163, 168 (1993).

This principle is particularly important when the party opposing dismissal lacks representation. A hearing request of a *pro se* party is to be liberally construed. As the First Circuit has explained:

Our judicial system zealously guards the attempts of *pro se* litigants on their own behalf. We are required to construe liberally a *pro se* complaint and may affirm its dismissal only if a plaintiff cannot prove any set of facts entitling him or her to

relief...the policy behind affording *pro se* plaintiffs liberal interpretation is that if they present sufficient facts, the court may intuit the correct cause of action, even if it was imperfectly pled. *Ahmed v. Rosenblatt*, 118 F.3d 886 (1st Cir. 1997)

ALLEGATIONS RELATIVE TO MOTION TO DISMISS

The following factual allegations are derived from the Parent's Amended Hearing Request and are presumed to be true for purposes of this *Ruling*, only.

1. On January 4, 2022, the Director of Special Education, Dr. Mary Anne Morris (Director), forwarded an email thread containing confidential and personally-identifying information about Parent (first and last name) and Student (first name) from her Springfield Public Schools email account to her husband and daughter. Neither the Director's husband nor her daughter is employed by the Springfield Public Schools or is otherwise authorized to have access to confidential student information. The email thread was also forwarded to the BSEA hearing officer as part of an exchange regarding scheduling of a conference call in the above-entitled matter.
2. As an accommodation for her disability, Parent uses a recording device at meetings as a "memory aid" to allow her to recall information and have reference notes from meetings or other oral presentations. A memory aid is "bound by the rules it will not be shared with anyone or used for any purpose other than notes." (Amended Hearing Request).
3. The Springfield Team had scheduled an "exit meeting" for Student to take place on March 25, 2022. In an email that she sent several hours prior to the meeting, Parent informed the District that she would be using her memory aid.
4. The District did not respond to the email. At the meeting District attendees informed Parent that Springfield would not consent to allowing her to record the meeting unless the District also did its own recording, which it potentially would use in litigation.
5. Parent alleges that District Team members knew that Parent would not share her audio recording but would use it solely to assist her with notetaking and recalling what took place at the meeting.
6. Parent elected not to use her memory aid under the conditions set forth by Springfield. As a result, she was unable to take notes at the meeting, "watched both attorneys, Dr. Morris, ETL, and outside providers all write notes while [she] sat with none, while humiliated, embarrassed which prevented [her] to any ability to participate meaningfully..."

7. Parent asserts that Springfield's action was retaliatory, and part of a pattern of disability-based discrimination against Parent.

ANALYSIS AND CONCLUSIONS WITH RESPECT TO MOTION TO DISMISS

In determining whether to grant the District's *Motion to Dismiss*, I must consider only the allegations in the Amended Hearing Request, which I must presume to be true. Applying the pertinent legal criteria to the above-listed allegations, I conclude that the claim of disability-based discrimination must be dismissed on jurisdictional grounds, insofar as it asserts claims under the ADA and §504 of the Rehabilitation Act but survives dismissal insofar as it alleges that Springfield committed a procedural violation of the IDEA by preventing Parent from fully participating in the meeting of March 25, 2022. Parent's claim relative to breach of confidentiality must be dismissed for failure to state a claim on which relief can be granted. My reasoning follows.

Violation of Parent's rights to reasonable accommodations for her disabilities under the ADA, §504 of the Rehabilitation Act, and the IDEA

The parties agree that Parent did not use her memory aid device at the exit meeting of March 25, 2022, although they disagree about the circumstances. Parent alleges that when Springfield stated that if Parent recorded the meeting, the District would do the same, Springfield effectively prevented Parent from using her device, thereby depriving her of reasonable accommodations for her disability in violation of the ADA, and §504 of the Rehabilitation Act, and preventing her from meaningfully participating in Student's exit meeting in violation of the IDEA.

The District correctly argues that the BSEA lacks jurisdiction to adjudicate claims under the ADA. *Chicopee Public Schools, supra*. Further, the BSEA cannot hear Parent's claim of discrimination in violation of §504 of the Rehabilitation Act because the BSEA's jurisdiction over §504 matters is limited to claims that a student with a disability has been denied a FAPE as defined by that provision. However, Parent's allegation that Springfield's actions barred her from meaningful participation in the exit meeting states a claim of a procedural violation that is cognizable under the IDEA,⁵ and, as such, must survive the District's *Motion to Dismiss*.

Ruling: Springfield's *Motion to Dismiss* Parent's claim relative to denial of reasonable accommodations for her disability is GRANTED with respect to claims under the ADA and §504 of the Rehabilitation Act. The *Motion to Dismiss* is DENIED insofar as Parent alleges that Springfield prevented her from fully

⁵ 20 USC §§1400(c)(5)(B); *Pihl v. Mass. Department of Education*, 9 F.3d 184 (1st Cir. 1993).

participating in the exit meeting of March 25, 2022 in violation of the IDEA, and Parent may present evidence in support of this allegation.

Breach of Confidentiality

There is no dispute that that the Director, who is an employee of the District, disclosed personally identifying information about Parent (first and last name) and Student (first name) to persons who were not authorized to receive it. However, in my Ruling of March 24, 2022, I determined that none of the multiple federal and state statutes and regulations governing confidentiality of student information, including the IDEA, grant jurisdiction or authority to the BSEA to enforce their provisions, or to impose any type of sanction or penalty against an individual or agency that violates those provisions.

Parent argues that she brings her claim under the aegis of the IDEA, rather than FERPA, such that it was not addressed in the prior Ruling. The prior Ruling clearly states, however, that the IDEA at 20 USC §§1412(8) and 1417(c), and the corresponding regulations at 34 CFR §§300.610-626, explicitly incorporate the FERPA confidentiality provisions.

Further, the federal regulations at 34 CFR §326.00 provide for enforcement by the U.S. Department of Education, but not by an administrative hearing officer in a due process proceeding. The only avenue for a hearing officer to consider evidence regarding a breach of confidentiality by a school district employee would be if the parent alleged that such disclosure deprived the student of a FAPE. Parent has made no such allegation here, and such cannot be inferred from the Parent's Amended Hearing Request.

Based on the foregoing, Parent's claim regarding breach of confidentiality should be dismissed for lack of jurisdiction and failure to state a claim on which relief can be granted. That said, the District is strongly advised to ensure that employees comply with all provisions governing the privacy and confidentiality of student information, including information coming before the BSEA.

Ruling: Springfield's *Motion to Dismiss* Parent's claim regarding the District's breach of confidentiality as a result of the Director's disclosure of personally identifying information about Parent and Student via an email forwarded to her family members in January 2022 is GRANTED.

LEGAL FRAMEWORK FOR SUMMARY JUDGMENT

The legal basis for a grant of summary judgment at the BSEA was discussed extensively in the ruling on the District's *Motion for Summary Judgment* issued on March 24, 2022, and will not be reiterated here, except to state that pursuant to 801 CMR 1.01, a hearing officer may issue summary judgment or summary decision in cases where there is no dispute of material fact, and the moving party is entitled to summary judgment or decision as a

matter of law. In contrast to a *Motion to Dismiss*, in which a hearing officer's inquiry is confined to the allegations in the hearing request, in ruling on a *Motion for Summary Judgment*, the hearing officer may review all the parties' submissions to date.

UNDISPUTED FACTS

The following facts are not in dispute and are derived from the Amended Hearing Request, the *Motion to Dismiss or for Summary Judgment* with a supporting *Memorandum*, and Parent's *Opposition* to Springfield's *Motion*. These facts are considered in the light most favorable to Parent as the non-moving party.

1. On January 4, 2022, the Director of Special Education, Dr. Mary Anne Morris, forwarded an email thread containing confidential and personally-identifying information about Student from her Springfield Public Schools email account to her husband and daughter. Neither the Director's husband nor her daughter is employed by the Springfield Public Schools or is otherwise authorized to have access to confidential student information. The email thread was also forwarded to the BSEA hearing officer as part of an exchange regarding scheduling of a conference call in the above-entitled matter.
2. As an accommodation for her disability, Parent uses a recording device at meetings as a "memory aid" to allow her to recall information and have reference notes from meetings or other oral presentations.
3. The Springfield Team had scheduled an "exit meeting" for Student to take place on March 25, 2022. In an email that she sent several hours prior to the meeting, Parent informed the District that she would be using her memory aid.
4. The District did not respond to the email, but, at the meeting itself, informed Parent that it would not consent to allowing her to record the meeting unless the District also did its own recording, which it potentially would use in litigation.
5. Parent elected not to use her memory aid under the conditions set forth by Springfield.

DISPUTED FACTS

The following factual allegation is in dispute: whether the District prevented Parent from using her memory aid accommodation device, and, if so, whether Parent was precluded from full participation in the exit meeting of March 25, 2022.

ANALYSIS AS TO MOTION FOR SUMMARY JUDGMENT

As stated in the discussion regarding the *Motion to Dismiss*, the BSEA lacks jurisdiction to adjudicate claims arising under the ADA, or over allegations of disability-based discrimination against parents prohibited by §504 of the Rehabilitation Act.⁶⁶ However, Parent's allegation, disputed by Springfield, that the District's conduct relative to Parent's use of her memory aid device deprived her of her procedural rights under the IDEA to participate in the meeting of March 25, 2022, survives the *Motion for Summary Judgment*. As for the issue of breach of confidentiality by the Director, because the relevant legislation does not authorize the BSEA to grant relief to Parent or Student for the above-referenced breach, summary judgment must be granted in favor of the District on that issue.

CONCLUSION AND ORDER

For the reasons stated above, Springfield's *Motion for Summary Judgment* is ALLOWED in part and DENIED on part, as follows:

- a) For all claims arising under the ADA or §504 of the Rehabilitation Act, the District's *Motion for Summary Judgment* is GRANTED because the BSEA lacks authority to grant the requested relief under those statutes.
- b) For the claim that Springfield's actions with respect to Parent's use of her memory aid at the meeting of March 25, 2022, prevented Parent from meaningfully participating in that meeting, in violation of relevant portions of the IDEA, Springfield's *Motion for Summary Judgment* is DENIED, and the matter may proceed to hearing on this issue.
- c) For all claims relative to the Director's breach of confidentiality as set forth in the Amended Hearing Request, the District's Motion is GRANTED because the BSEA lacks authority to grant relief for said breach.

As stated in a separate Order, this matter is scheduled to proceed to hearing on all surviving issues in the original and Amended hearing request on July 25, 26 and 27, 2022, beginning at 10:00 AM.

By the Hearing Officer,

/s/ *Sara Berman*

Sara Berman

Dated: June 1, 2022

⁶⁶ As stated above, the BSEA's jurisdiction relative to §504 is limited to issues related to provision of FAPE to students with disabilities. MGL c. 71B, §2A.

