

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

In Re: Student & Scituate Public Schools

BSEA No. 2212422

RULING ON SCITUATE PUBLIC SCHOOL DISTRICT'S MOTION TO DISMISS

This matter comes before the Hearing Officer on the Scituate Public Schools' (Scituate or District) *Motion to Dismiss (Motion)*, filed with the BSEA on June 30, 2022. As grounds for its *Motion*, Scituate asserts that the BSEA lacks jurisdiction over a number of Parent's claims against Scituate, that Parent has failed to state a "cognizable claim for which relief can be granted" and that Parent's claims are "well beyond" the allowable statute of limitations.

For the reasons articulated below, Scituate's *Motion* is **ALLOWED** as to all claims contained in the *Hearing Request*, and this matter is hereby **DISMISSED** with prejudice.

RELEVANT PROCEDURAL HISTORY

On June 23, 2022, Parent filed a *Request for Hearing* against Scituate, asserting various allegations of impropriety by Scituate against all her children¹ and indicating she is seeking to resolve the following identified issues,

"Misappropriation of funds; Refusal to identify children for special education; Fundamental corruption of both state and local governments; Inappropriate communication; Civil and Human rights violations; Physical and Cyber Stalking; Battery/Assault @ SPS; Property destruction/Vandalism; [and] Home Intrusions."

The resolution sought was,

"Education; Secondary & Post Secondary Schools of Choice with state-of-the-art technology* and athletic opportunities; Housing; Family homes with security; Vehicles: 2023 Vehicles of choice; Monetary: Significant; *Devices: phones, computers, etc. with security; [and] Support: A direct contact who is very reliable and will advocate for continued family support."

On June 30, 2022, Scituate filed the underlying *Motion*. A resolution session was held on July 6, 2022 but the parties were not able to reach a resolution. The initial Conference Call was held on July 12, 2022, and a further Conference Call was held on June 13, 2022. During these Calls, Parent requested additional time to respond to the *Motion*, and it was agreed she would file any such response on or before the close of business on July 19, 2022. Parent agreed to identify which claims in the *Hearing Request* applied specifically to Student in her response document. The Parties also discussed the need for Student to be notified of the proceedings since Student,

¹ The *Hearing Request* was filed on behalf of all three (3) of Parent's children but fails to identify by name which of Parent's children are involved in each of the allegations, instead using phrases such as "my children", "the child affected in this complaint", "my daughter" (it appears Parent has 2 daughters and a son), et cetera." Thus, it is not clear from the *Hearing Request* which of the allegations relate specifically to Student.

who is 25 years old, is her own guardian, and has not delegated or chosen to share educational decision-making with Parent².

On July 22, 2022 Parent filed an *Opposition to Scituate Public Schools (SPS) District's Motion to Dismiss (Opposition)*. To date, Student has not filed any responsive document to the *Motion*. Scituate did not object to Parent's late submission of her *Opposition* and thus it was entered into the record, and fully considered in the issuance of this Ruling. Neither party requested a Hearing on the *Motion*. As neither testimony nor oral argument would advance my understanding of the issues involved, I issue this Ruling without a Hearing, pursuant to Rule VII(D) of the *Hearing Rules for Special Education Appeals*.

RELEVANT FACTS

In her *Hearing Request*, Parent alleges that, as to Student specifically³, Scituate failed to provide her a free, appropriate, public education (FAPE) when it refused to evaluate Student in 2008, upon receiving a request for such an evaluation from Parent, in which Parent identified Student as having a "reading learning disability".. Parent also alleges that Scituate coordinated with the Scituate Police Department (SPD) in 2014 to stalk Student, that Student and her entire family was subjected to "civil and human rights violations" by SPD when Student's sibling attended a Scituate event on January 12, 2016 and that there were undated instances of "inappropriate communication" and "physical and cyber stalking of Student's entire family" by Scituate, including but not limited to Student receiving a traffic ticket from SPD and a suspension from SPS on the same day during the 2014-2015 school year⁴.

Parent also contends that the BSEA has jurisdiction and authority to issue the education-related resolutions (i.e., "Secondary and Post-Secondary Schools of Choice with state-of-the-art technology and athletic opportunities") she requested. Finally, Parent submits that the two-year statute of limitations does not apply, as she "addressed these issues in a timely manner while [Scituate] failed to act under the requirements of IDEA and provide FAPE to [S]tudent ...".

In its *Motion*, Scituate advises that Student attended Scituate Public Schools until June 5, 2015, when she graduated from Scituate High School earning a high school diploma. Scituate disputes

² Although there may be a legitimate standing issue involved in this matter, Scituate has not raised this claim in its *Motion*, and thus this Ruling does not address Parent's standing to file the *Hearing Request*. Further, the parties agreed to a schedule whereby Parent would send a copy of the *Hearing Request* to Student, Scituate would then send a copy of the *Motion* to Student and the BSEA would send a copy of the remainder of the record to Student. Student was also provided the opportunity to file a responsive document, if any, to the *Motion* by July 29, 2022.

³ While typically motions to dismiss are reviewed by looking at the information contained within a *Hearing Request* only, taking as true all the facts contained therein and drawing all inferences in favor of the party filing the *Hearing Request* (*Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995)), here, both in light of Parent's pro-se status, and given the challenges of knowing which allegations of the *Hearing Request* pertained to Student, as noted in footnote 1, *supra*, in issuing this Ruling I also considered the clarifying information provided by Parent in her *Opposition* as to the allegations involving Student. See *Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997). "The policy behind affording pro se plaintiff's liberal interpretation [of their *Hearing Request*] 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." 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.*

⁴ According to Parent, the traffic ticket was dismissed in court and the suspension was removed from Student's record by the Scituate principal.

that Student was ever referred for a special education evaluation and further contends Student was never "... evaluated or found eligible under Section 504 as a student with a disability". Scituate contends that the BSEA does not have any jurisdiction in this matter, as Student was never identified as a child with a disability or eligible for special education or related services under either federal or state special education laws, including Section 504, the IDEA and M.G.L. c. 71B. To the extent there is jurisdiction, Scituate argues that all claims are well beyond the statute of limitations period, and thus must be dismissed. Further, Scituate disputes that the BSEA can order any of the relief requested by Parent.

LEGAL STANDARD

1. Legal Standard for a Motion to Dismiss.

Pursuant to Rule XVI(A) and (B) of the *Hearing Rules for Special Education Appeals* 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 granted⁵. To survive a motion to dismiss, there must exist "factual 'allegations plausibly suggesting (not merely consistent with)' an entitlement to relief..."⁶. 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"⁷. Motions to dismiss are decided based on the facts alleged in the *Hearing Request* and such documents attached or incorporated by reference to it⁸.

In analyzing motions to dismiss, hearing officers "begin by identifying and disregarding statements in the [*Hearing Request*] that merely offer 'legal conclusion[s] couched as ... fact[]' or '[t]hreadbare recitals of the elements of a cause of action.'"⁹ Additionally, "non-conclusory factual allegations in the [*Hearing Request*] must then be treated as true, even if seemingly incredible"¹⁰. The party opposing the motion, therefore, must show "factual allegations ... enough to raise a right to relief above the speculative level... [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact)"¹¹.

2. Jurisdiction of BSEA and Available Remedies.

⁵ As these rules/regulations are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hearing officers are generally guided by federal court decisions in deciding such motions.

⁶ *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

⁷ *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995).

⁸ See *Nollet v. Justices of the Trial Court of Mass.*, 83 F. Supp. 2d 204, 208 (D.Mass. 2000), *aff'd*, 248 F.3d 1127 (1st Cir. 2000); *In Re: Ludlow Public Schools*, BSEA No. 1603808, 115 LRP 58373 (Figueroa, 2015). However, as explained in footnote 3, *supra*, given Parent's pro se status and the lack of specificity regarding the allegations attributed to Student in the *Hearing Request*, I also considered the clarification provided by Parent in her *Opposition* as to *Hearing Request* allegations pertaining to Student, directly.

⁹ *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 12 (1st Cir. 2011), citing *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-50 (2009) (quoting *Bell Atl. Corp.*, 550 U.S. at 555).

¹⁰ *Id.*, citing *Iqbal*, 129 S.Ct. at 1951.

¹¹ *Iannocchino* 451 Mass. at 636 quoting *Bell Atl. Corp.*, 550 U.S. at 555 (internal citations omitted); see *Ocasio-Hernandez*, 640 F.3d at 12.

20 USC §1415(b)(6), grants parties the right to file timely complaints (with the state educational agency designated to hear same) “with respect to any matter relating to the identification, evaluation or educational placement of the child, or the provision of a free appropriate public education to such child”¹². Similarly, M.G.L. c. 71B §2A, establishing the BSEA, authorizes it to resolve special education disputes concerning,

... (i) any matter relating to the identification, 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 [IDEA], 20 U.S.C. section 1400 et seq., and its regulations; or (ii) a student's rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, and its regulations.

For those matters within its jurisdiction the BSEA is also limited by law as to the remedies it can order. Regardless of how a claim is characterized, if it is, in essence, a claim alleging a failure to provide a FAPE to a student, punitive and tort-like compensatory damages are not available, “...because the windfall of such awards to IDEA plaintiffs would likely come at the expense of other educational benefits for other schoolchildren by diverting from them scarce educational resources”¹³. As the First Circuit recognized, “in choosing not to authorize tort-like monetary damages or punitive damages in cases under the IDEA, Congress made a balanced judgment that such damages would be an unjustified remedy for this statutorily created cause of action”¹⁴.

Instead, the available remedies under the IDEA involve “[a]wards of compensatory education and equitable remedies that involve the payment of money, such as reimbursements to parents for expenses incurred on private educational services to which their child was later found to have been entitled ...”¹⁵. The emphasis on remedies providing for compensatory education for missed services or reimbursement to parents for services that should have been made available to a student but instead were unilaterally provided is in keeping with the IDEA’s focus on ensuring that students and their families are made whole by receiving “in-kind delivery of educational services” and supports that should have been provided outright¹⁶.

3. *Statute of Limitations Applicable to BSEA Hearings.*

Finally, the IDEA requires that due process proceedings be commenced within two years of the date that a party knew or should have known of the actions forming the basis of its hearing request¹⁷. The only exceptions to this two-year limitation period are if a parent is prevented from filing a hearing request because of “(i) specific misrepresentations by the [district] that it

¹² See 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a), providing for the BSEA to hear “... any matter concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law or the procedural protections of state and federal law for students with disabilities”.

¹³ *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 36 (1st Cir. 2006)

¹⁴ *Id.* at 37; see *Frazier v Fairhaven School Committee*, 276 F.3d 52, 59 noting without explanation that “... the array of remedies available under the IDEA does not include money damages.”

¹⁵ *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 124 (1st Cir. 2003); see 20 U.S.C. § 1412(a)(10)(C)(ii); *Diaz-Fonseca* 451 F.3d at 31.

¹⁶ See *Frazier*, 276 F.3d at 59-60.

¹⁷ 20 USC 1415(f)(3)(C); 34 CFR 300.507(a)(2); 34 CFR 300.511(e). Massachusetts does not have a different limitation period for special education due process proceedings.

had resolved the problem forming the basis of the complaint; or (ii) the [district]’s withholding of information from the parent that was required ... to be provided ...”¹⁸.

Guided by this legal authority, I turn to Scituate’s *Motion*.

APPLICATION OF LEGAL STANDARDS

After reviewing the *Hearing Request* in the light most favorable to Parent, as I am required to do¹⁹, I find many of the allegations to be outside the jurisdiction of the BSEA. Specifically, claims related to alleged physical and cyberstalking of Student by Scituate and/or SPD, claims of civil and human rights violations related to an incident that took place with Student’s sibling in 2016, and claims of discipline that took place in a regular education context are all outside the jurisdiction of the BSEA, notwithstanding the fact that they all also appear to have occurred far beyond the two-year statutory timeframe. The only allegation that is within the BSEA’s jurisdiction, namely the claim that Scituate failed to evaluate Student in 2008 upon Parent’s request, also occurred well prior to two years before the *Hearing Request* was filed²⁰. Parent does not raise any allegations implicating any exception to the statutory timeframe²¹, nor does her argument that she had previously “addressed these issues in a timely manner” fall within one of the statutory exceptions.²²

Additionally, Parent has not challenged Scituate’s assertion that Student, who is 25 years old, graduated and received a high school diploma from Scituate on June 5, 2015, over seven (7) years before the *Hearing Request* was filed. Thus, Parent cannot raise any factual allegations relating to the identification, evaluation, educational program, or educational placement of Student for which Scituate may be responsible²³, that could exist within the two years preceding the filing of the *Hearing Request*.

ORDER

Scituate’s *Motion* is **ALLOWED** as to all claims in the *Hearing Request*, and this matter is hereby **DISMISSED with prejudice**.

By the Hearing Officer,

¹⁸ 20 USC 1415(f)(3)(D); 34 CFR 300.511(f).

¹⁹ *Iannocchino* 451 Mass. at 636 quoting *Bell Atl. Corp.*, 550 U.S. at 555 (internal citations omitted).

²⁰ Additionally, even if the statute of limitations had not been determinative in this matter, the totality of the relief requested by Parent (including but not limited to her request for “Education: Secondary and Post-Secondary Schools of Choice with state-of-the-art technology and athletic opportunities”), is not available through the BSEA for the reasons explained *supra*. *Nieves-Marquez*, 353 F.3d at 124; see 20 U.S.C. § 1412(a)(10)(C)(ii); *Diaz-Fonseca* 451 F.3d at 31, 37 and 37. Moreover, the BSEA unable to order prospective educational services absent a finding that compensatory education is warranted for a failure to provide necessary special education and related services within the two-year statutory limitation period, claims not raised in this matter. 20 USC 1415(f)(3)(C); 34 CFR 300.507(a)(2); 34 CFR 300.511(e).

²¹ 20 USC 1415(f)(3)(D); 34 CFR 300.511(f).

²² *Id.*

²³ M.G.L. c. 71B §2A; *Ocasio-Hernandez*, 640 F.3d at 12 citing *Iqbal*, 129 S.Ct. at 1951.

/s/ Marguerite M. Mitchell
Marguerite M. Mitchell

Date: August 10, 2022

COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS

EFFECT OF FINAL BSEA ACTIONS AND RIGHTS OF APPEAL

Effect of BSEA Decision, Dismissal with Prejudice and Allowance of Motion for Summary Judgment

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Similarly, a Ruling Dismissing a Matter with Prejudice and a Ruling Allowing a Motion for Summary Judgment are final agency actions. If a ruling orders Dismissal with Prejudice of some, but not all claims in the hearing request, or if a ruling orders Summary Judgment with respect to some but not all claims, the ruling of Dismissal with Prejudice or Summary Judgment is final with respect to those claims only.

Accordingly, the Bureau cannot permit motions to reconsider or to re-open either a Bureau decision or the Rulings set forth above once they have issued. They are final subject only to judicial (court) review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. This means that the decision must be implemented immediately even if the other party files an appeal in court, and implementation cannot be delayed while the appeal is being decided. Rather, a party seeking to stay—that is, delay implementation of—the decision of the Bureau must request and obtain such stay from the court having jurisdiction over the party’s appeal.

Under the provisions of 20 U.S.C. s. 1415(j), “unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement,” while a judicial appeal of the Bureau decision is pending, unless the child is seeking initial admission to a public school, in which case “with the consent of the parents, the child shall be placed in the public school program.”

Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child’s placement while judicial proceedings are pending must ask the court having jurisdiction over the appeal to grant a preliminary injunction ordering such a change in placement. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

Compliance

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that

the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

Rights of Appeal

Any party aggrieved by a final agency action by the Bureau of Special Education Appeals may file a complaint for review in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts. 20 U.S.C. s. 1415(i)(2).

An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

Confidentiality

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove School District v. Pulitzer Publishing Company*, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

Record of the Hearing

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.