

**COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS**

Student v. Scituate Public Schools

BSEA # 2212423

RULING ON SCITUATE PUBLIC SCHOOLS' MOTION TO DISMISS

PROCEDURAL HISTORY

Parent filed a Request for Hearing on June 23, 2022, with respect to Student and two of his siblings. It was unclear which claims pertained to Student and which claims pertained to Student's siblings. The Statement of Issues included the following: "Misappropriation of funds; 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 at SPS; property destruction/vandalism; home intrusions." The relief sought by Parent included: secondary and post-secondary schools of choice; family homes with security; 2023 vehicles of choice; significant monetary damages; phones, computers and other devices with security and a direct contact who is reliable and will advocate for continued family support. Scituate Public Schools (Scituate) filed a Motion to Dismiss on June 30, 2022. Parent did not provide a response by the July 7, 2022 due date and the Hearing Officer emailed the Parties and offered to provide Parent with an extension to respond until July 15, as she was not represented by counsel. During the July 15, 2022 conference call, Parent requested a further extension and the Hearing Officer allowed Parent's request to mail her response by July 19. Parent's Opposition to Scituate's Motion to Dismiss was received by the BSEA on July 22, 2022.

SCITUATE'S POSITION

Scituate argues that the BSEA does not have jurisdiction to decide many of Parent's claims. It notes that many of Parent's claims relate to non-special education related matters such as criminal and private civil matters that Parent might raise on her own behalf in another forum. It further notes that Parent has failed to state a claim on which relief can be granted because the BSEA is not authorized to award the relief that Parent seeks. Finally, it argues that any remaining FAPE claims are well beyond the statute of limitations allowed under the IDEA. Thus, it argues, Parent's claims must be dismissed in their entirety as a matter of law.

PARENTS' POSITION

Parent argues that the BSEA has jurisdiction over her claims regarding Scituate's refusal to identify and evaluate Student for special education. She notes that Parent identified a reading learning disability in 2008 and requested support from Student's teacher. She states that Student began receiving services from a reading specialist. She further argues that the BSEA has jurisdiction over her claims regarding inappropriate communication and civil and human rights violations, including Scituate Police Department stalking Student in 2014 in coordination with

Scituate Public Schools'. She further states that BSEA has jurisdiction over her claims regarding a 2015 assault and battery inflicted by another student on "sibling," and that that the BSEA has jurisdiction over her claims pertaining to a January 2016 incident involving civil and human rights violations of the entire family coordinated by Scituate and physical and cyber stalking of Student's entire family. Parent further argues that the removal of Scituate's current Special Education Director is necessary.

FACTS¹

In 2008 Parent identified a reading learning disability and requested support from Student's teacher. Student began receiving services from a reading specialist. Student attended the Scituate Public Schools until May 31, 2019, at which point he had met all of the state and local requirements for graduation and graduated with his high school diploma. While a student at Scituate, Student was never referred for a special education evaluation or evaluated or found eligible under section 504 as a student with a disability. Most of the classes taken by Student in high school were Honors, College Prep, or Advanced Placement level classes. Student graduated with a grade point average of 4.17.

LEGAL STANDARD

Under the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3) and Rule 17B of the *BSEA Hearing Rules for Special Education Appeals*, a BSEA 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.² Specifically, a motion to dismiss should be granted only if the party filing the appeal can prove no set of facts in support of his or her claim that would entitle him or her to relief that the BSEA has authority to order. That is, a hearing officer may dismiss a case if he or she cannot grant relief under either the federal or state special education statutes or the relevant portions of Section 504 of the Rehabilitation Act, after considering as true all allegations made by the party opposing dismissal and drawing all reasonable inferences in his/her favor. See *Caleron-Ortiz v. LaBoy-Alverado*, 300 F.3d 60 (1st Cir. 2002);³ *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 (December 28, 2005).

JURISDICTION OF THE BSEA

The BSEA has jurisdiction to consider only those claims for which it is expressly delegated authority by its enabling statutes and regulations, and not inconsistent with them. *Globe Newspaper Co. V. Beacon Hill Architectural Comm.*, 847 F.Supp. 179 (D. Mass. 1994) "The

¹ The facts are established for purposes of this Ruling only.

² See, for example, *In Re: Inessa R. v. Groton Dunstable School District*, BSEA No. 95-3104 (Byrne, November 1995)

³ A motion to dismiss will be denied if "accepting as true all well-pleaded factual averments and indulging all reasonable inferences in the plaintiff's favor, if recovery can be justified under any applicable legal theory. Id

IDEA and conforming Massachusetts law give the BSEA authority to determine the respective rights and obligations of publicly funded agencies and parents/students in the implementation of federal and state special education statutes.” *In Re: Monson Public Schools*, 110 LRP 49101 (August 23, 2010). The BSEA has jurisdiction over (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 appropriate public education to the child arising under this chapter and regulations promulgated hereunder or under the Individuals with Disabilities Education Act, 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. M.G.L. ch. 71B§ 2A(a)(1). The BSEA "can only grant relief that is authorized by these statutes and regulations, which generally encompasses orders for changed or additional services, specific placements, additional evaluations, reimbursement for services obtained privately by parents or compensatory services."⁴

ANALYSIS/CONCLUSIONS

Scituate’s contention that the majority of the claims raised by Parent’s Hearing Request fall outside of the jurisdiction of the BSEA, as delineated above, is correct. The claims of misappropriation of funds; fundamental corruption of both state and local governments; inappropriate communication; civil and human rights violations; physical and cyber stalking; battery/assault at Scituate; property destruction/vandalism; and home intrusions fall outside the jurisdiction specifically granted to the BSEA. Likewise, the BSEA does not have any authority over the Scituate Police Department and thus has no jurisdiction over claims that it stalked Student. Thus, the aforementioned claims are dismissed *with prejudice*.

The remaining claims, alleging failure to provide a FAPE and refusal to identify and evaluate children of special education falls within the jurisdiction of the BSEA. However, these claims are barred by the 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.⁵ Even accepting as true Parent’s allegations that Student was erroneously found not to be eligible for special education in 2008, such claim is twelve years outside the statute of limitations. Further claims regarding child find or FAPE should have been raised no later than May 31, 2021, two years after Student graduated and was no longer eligible to receive special education. Parent does not allege any facts that would warrant an exception to the two-year statute of limitations. See 20 U.S.C. § 1415(f)(3)(D).

Finally, although not raised by Scituate, Parent acknowledged during the July 15, 2022 conference call that Student is an adult and Parent does not have legal guardianship of him. Both 20 USC §1415(m) and 603 CMR 28.01(15) provide that parental rights and educational decision-making transfers to the student when s/he turns eighteen years of age. Similarly, 34 CFR 300.520(a)(1)(ii) provides that when the student reaches the age of majority “[a]ll rights accorded to parents under Part B of the Act transfer to the child.” Thus, even if the claims over which the BSEA has jurisdiction were not barred by the statute of limitations, Parent would not have the right to file these claims on behalf of her adult son.

⁴ *In Re: Georgetown Pub. Sch.*, BSEA #1405352 (Berman, 2014).

⁵ 34 CFR 300.507(a)(2).

ORDER

Scituate's Motion to Dismiss is ALLOWED *with prejudice*.

Dated: August 3, 2022