

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

In Re: Student v. Springfield Public Schools

BSEA # 2208440

RULING ON SPRINGFIELD PUBLIC SCHOOLS' MOTION TO DISMISS

This matter comes before the Hearing Officer on *Springfield Public Schools' Motion to Dismiss* filed on September 19, 2022. Springfield Public Schools (Springfield or the District) asserts that Parent's claims of Title IX and 14th Amendment of the United States Constitution violations, as well as retaliation claims, must be dismissed for lack of subject matter jurisdiction.

In response, on September 20, 2022, Parent filed a *Motion to Quash* asserting that said claims must not be dismissed because

“[t]he question before the BSEA is whether failing [to] conduct the Title IX investigation resulted in denying the student FAPE.... Deliberate indifference violation of IDEA [occurred when] the school [did not take] prompt action in the IEP right away and to make a plan for after the investigation as appropriate.... Only conducting the physical investigation would fall outside of the BSEA's Jurisdiction. Student[] was deprived educational opportunity that directly correlated to significant regression, lack of progress, and anxiety, and depression ... [and] fear of school....”¹

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 set forth below, the District's *Motion* is hereby ALLOWED, in part, and DENIED, in part.

PROCEDURAL HISTORY AND RELEVANT FACTS²:

1. Student is a 6th grade student in the Springfield Public Schools.
2. On April 11, 2022, the District held an IEP meeting without Parent being present.
3. On April 20, 2022, Student was involved in sexual misconduct for which he was suspended.
4. On April 26, 2022, Parent filed a Request for Hearing seeking an Order to remove Student's suspension from his record as well as an “Order for compensatory services”;

¹ Where possible, the Hearing Officer cites the pleadings verbatim so as to ensure accuracy.

² For the purposes of this *Motion*, I take as true the assertions set out in Parent's Complaint.

- an Order that the District “violated parent's rights by moving forward with IEP meeting without parent”; an Order that the District “failed to update and implement student’s IEP”; and an Order “for a [p]lacement in a different school.”
5. The hearing was postponed for good cause until October 18, 2022.
 6. On September 16, 2022, Parent filed an Amended Hearing Request adding the following issues for hearing:
 - “1. Whether the school district [denied Student a FAPE when it] failed to report and conduct a [T]itle IX complaint when [Student] reported being touched sexually by a student....
 2. Whether [the] District denied [a] FAPE to [Student] after sending him to a 45-day placement at Center [S]chool for observations then came to the meeting denied [C]enter [S]chool[‘s] recommendations including placement, learning disability SLD form, Executive functioning goal, and self-regulation goals.
 3. Whether [the Director of Special Education for the Springfield Public Schools] denied [Student a] FAPE by making unilateral placement decisions in the IEP meeting
 4. Whether [the] conduct [of [the Director of Special Education for the Springfield Public Schools, Dr. Morris] in the IEP meeting was retaliatory and denied student [a] FAPE because [of Student’s] advocate.
 5. Whether the IEP was unilaterally written denying parent rights under IDEA and the 14th [E]qual [P]rotection [A]ct [sic] of the Constitution.
 6. Whether the District denied [S]tudent [a] FAPE though [sic] undue influence by saying [Student] could only have transportation if Parent agreed to the unilaterally offered placement that is not appropriate
 7. Whether the District owe[s] [Student] compensatory services.”
 7. In her amended complaint, Parent sought an Order for compensatory services; an Order that the District “violated parent’s rights by moving forward with IEP meeting without parent; an Order that the “District failed to update and implement students IEP”; an Order for a placement at Center School; an Order that “the most current proposed IEP was unilaterally written”; and an Order that “the District’s retaliation denied student FAPE and Parent.” The BSEA’s Recalculated Notice of Hearing scheduled the hearing date for October 21, 2022.
 8. On September 19, 2022, the District filed the instant Motion asserting that Parent’s claims of Title IX violations, retaliation, and violation of the 14th Amendment of the United States Constitution must be dismissed for lack of subject matter jurisdiction. Specifically, the District sought dismissal of the following issues raised by Parent:
 - “1. Whether the District failed to report and conduct a Title IX complaint when [Student] reported being touched sexually by a student.
 - “2. Whether Dr. Morris’s conduct in the IEP meeting was retaliatory and denied the Student a FAPE because I am the advocate3. Whether parent's rights were denied under the 14th equal protection act of the Constitution.”

9. On September 20, 2022, Parent filed a *Motion to Quash* asserting that “Dr. Morris’s actions raise Failure to Protect claims, [or] ‘Failure to supervise’ [claims]”; that “Dr. Morris’s conduct in Dr’s meetings and directives in meetings she did not attend were certain IDEA [harassment] and retaliation because it directly affected [Student’s] ability to access his education”; and that the asserted Title IX claims are inextricably intertwined with Student’s special education rights.

LEGAL STANDARDS:

1. *Legal Standard for Motion to Dismiss*

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. 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, which require the fact-finder to make a determination based on a complaint or hearing request alone.

To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”³ 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.”⁴ These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”⁵

2. *Jurisdiction of the Bureau of Special Education*

20 U.S.C. § 1415(b)(6) grants the Bureau of Special Education Appeals (BSEA) jurisdiction over timely filed complaints by a parent/guardian or a school district "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."⁶ In Massachusetts, a parent or a school district, "may request mediation and/or a hearing at any time on any matter⁷ concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities."⁸ A parent of a student with a disability may also request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973....⁹ However, the BSEA "can only grant relief that is authorized by these statutes and regulations, which generally encompasses orders for changed or additional services, specific

³ *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

⁴ *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995).

⁵ *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted).

⁶ See 34 C.F.R. §300.507(a)(1).

⁷ Limited exceptions exist that are not here applicable.

⁸ 603 CMR 28.08(3)(a).

⁹ See 29 U.S.C. 794 (Section 504 of Rehabilitation Act); 34 CFR 104.

placements, additional evaluations, reimbursement for services obtained privately by parents or compensatory services."¹⁰

The BSEA's jurisdiction extends to IDEA-based claims as well; the First Circuit held, in a case addressing exhaustion of claims filed under 42 U.S.C. § 1983, that the BSEA is not deprived of jurisdiction by the fact that certain claims are not based directly upon violations of the IDEA, nor by the fact that the relief a complainant seeks cannot be awarded by the agency.¹¹ The IDEA's exhaustion requirement ensures that the BSEA is able to develop a factual record and apply its "specialized knowledge" in an IDEA-based claim.¹² The IDEA's exhaustion requirement "applies even when the suit is brought pursuant to a different statute so long as the party is seeking relief that is available under subchapter II of IDEA."¹³

However, in *Fry v. Napoleon Community Schools*, 137 S.Ct. 743, 752 (2017), the U.S. Supreme Court held that "exhaustion is not necessary when the gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee – what the Act calls a 'free appropriate public education.'" Whether a claim is IDEA-based turns on whether the underlying claim is one of violation of the IDEA, or "where there are no factual allegations to indicate that a dispute exists concerning the individual student's eligibility under the IDEA or Section 504 or the discharge of the School's procedural and substantive responsibilities under the IDEA or [Section 504 of the Rehabilitation Act of 1973]."¹⁴

APPLICATION OF LEGAL STANDARDS:

In evaluating the District's *Motion to Dismiss* under the **LEGAL STANDARDS** set forth *supra*, I take Parent's allegations in her Hearing Request as true as well as any inferences that may be drawn from them in her favor, and deny dismissal if these allegations plausibly suggest an entitlement to relief.¹⁵ Here, considering as true all facts alleged by the party opposing dismissal (in this case, Parent), I find that Parent's claims relative to violation of the 14th Amendment must be dismissed for lack of subject matter jurisdiction. Parent's retaliation claim must also be dismissed. However, Parent's claim that the District's failure to report and to conduct a Title IX complaint when Student "reported being touched sexually by a student" denied Student a FAPE survives. My reasoning follows.

As discussed in the **LEGAL STANDARDS** section *supra*, not every disability-based claim is subject to the IDEA's exhaustion requirement.¹⁶ In the instant matter, Parent's 14th Amendment claims are not well articulated. In fact, the Hearing Officer cannot find that Parent has pleaded "factual allegations" that are sufficient to "raise a right to relief above a speculative level on the

¹⁰ *In Re: Georgetown Pub. Sch.*, BSEA # 1405352 (Berman, 2014).

¹¹ See *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 59, 64 (1st Cir. 2002).

¹² *Id.* at 60.

¹³ *Rose v. Yeaw*, 214 F.3d 206, 210 (1st Cir. 2000).

¹⁴ *In Re Xylia*, BSEA # 12-0781 (Byrne 2012); see *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 29 (2006); *Frazier*, 276 F.3d at 64.

¹⁵ *Blank*, 420 Mass. at 407.

¹⁶ See, for example, *In Re Xylia*, BSEA # 12-0781 (Byrne 2012).

assumption that the allegations in the complaint are true (even if doubtful in fact).”¹⁷ Other than raising the claim, Parent offers no facts to support it. At most, this Hearing Officer can speculate, based on the *Motion to Quash*, that Parent asserts that the District violated Student’s 14th Amendment rights because “Dr. Morris’s actions raise Failure to Protect claims, [or] ‘Failure to supervise’ [claims].” Generally, courts have determined that a district’s failure to respond to reports of bullying or harassment rarely amount to an affirmative act for purposes of a state-created danger claim under the 14th Amendment.¹⁸ However, even if Dr. Morris’s actions were to amount to an affirmative act for purposes of a state-created danger claim, Parent’s claim would still not require exhaustion. First, the BSEA lacks specific statutory authority over, or expertise and experience in, adjudicating constitutional claims.¹⁹ Moreover, the claim, as interpreted by the Hearing Officer, has no basis in IDEA or Section 504 of the Rehabilitation Act; in fact, it is a claim that could be raised by any general education student.²⁰ Because the essence of the claim is something besides the denial of the IDEA’s core guarantee of a FAPE, the claim is dismissed for lack of subject matter jurisdiction.

Parent also alleges that “Dr. Morris’s conduct in meetings and [her] directives in meetings she did not attend were certain IDEA [harassment] and retaliation because it directly affected [Student’s] ability to access his education.” In 2000, the First Circuit Court, in *Weber v. Cranston Sch. Comm.*, 212 F.3d 41 (1st Cir. 2000), addressed the issue of whether retaliation claims require exhaustion. In that case, the parent asserted, in part, that the district retaliated against her for enforcing her disabled child’s rights under IDEA and Section 504 of the Rehabilitation Act when she requested that the district “declassify” her son as a disabled student and the district refused. There, the Court found that exhaustion was necessary because “the IDEA complaint provision in subchapter II affords the ‘opportunity to present complaints 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.’ Weber’s claim of retaliation is literally ‘related’ to the ‘identification, evaluation, or educational placement of [her] child,’ and to her efforts to gain for him ‘the provision of a free appropriate public education.’ As Weber ha[d] completely failed to explain to us why she does not therefore have relief that is available through an IDEA due process hearing that must be exhausted, we conclude that Weber had to invoke the due process

¹⁷ *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 12 (1st Cir. 2011) (“in order to ‘show’ an entitlement to relief a complaint must contain enough factual material ‘to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)’”); see also *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 563, 127 S. Ct. 1955, 1969, 167 L. Ed. 2d 929 (2007) (a complaint must be plausible on its face and bring forth sufficient factual allegations that nudge a claim across the line from conceivable to plausible)

¹⁸ See, e.g., *Lamberth v. Clark County Sch. Dist.*, 71 IDELR 1 (9th Cir. 2017, unpublished) (finding that school officials who purportedly failed to properly report the bullying of a student who later committed suicide could not be held liable for federal civil rights violations); *Waters v. Perkins Local Sch. Dist. Bd. of Educ.*, 63 IDELR 69 (N.D. Ohio 2014) (finding that a district’s purported failure to investigate, respond to, or properly classify incidents of harassment by a classmate with ADHD did not amount to affirmative acts, the court rejected the parents’ state-created danger theory).

¹⁹ See, for example, *In Re: Chicopee Public Schools and Massachusetts Department of elementary and Secondary Education (Ruling on Motion to Dismiss)*, BSEA # 1608986 (Berman, 2016) (dismissing 14th Amendment claim for lack of subject matter jurisdiction).

²⁰ See *Fry v. Napoleon Community Schools*, 137 S.Ct. 743, 752 (2017).

hearing procedures of IDEA before filing her retaliation claim in federal court pursuant to Section 504 of the Rehabilitation Act and 42 U.S.C. § 1983.”²¹

Similarly, Hearing Officer Amy Reichbach, in *Ruling on Springfield Public Schools Partial Motion to Dismiss* in *In Re: Ollie v. Springfield Public Schools*, BSEA # 20-4776 (2020), concluded that that unless a claim of retaliation is tied to a FAPE claim, it is outside the jurisdiction of the BSEA. Here, Parent asserts that “Dr. Morris’s conduct in [Student’s] meetings and [her] directives in meetings she did not attend were . . . retaliation” but asserts no facts suggesting that Dr. Morris’s retaliation is tied to any FAPE claim.²² In contrast to *Weber*, Parent’s retaliation claim does not relate to Student’s evaluation or provision of special education services. Therefore, Parent’s claim of retaliation is not subject to the exhaustion requirement²³ and must be dismissed for lack of jurisdiction.²⁴

The District argues that the BSEA has no jurisdiction over Title IX claims. On the other hand, Parent asserts that “[o]nly conducting the physical investigation would fall outside of the BSEA’s [j]urisdiction.” She also argues that Student “was deprived educational opportunity that directly correlated to significant regression, lack of progress, and anxiety, and depression . . . [as well as] a fear of school.” Title IX requires school districts (and other recipients of federal funds) to respond promptly to sexual harassment complaints.²⁵ According to the Office for Civil Rights, “sexual harassment must effectively deny a student access to her educational program to be actionable under Title IX.”²⁶ Although the BSEA has no jurisdiction over Title IX claims,²⁷ taking Parent’s allegations as true²⁸, Parent’s assertion that the District’s actions (or inactions) relative to Student’s Title IX complaint resulted in the District’s failure to deliver FAPE and in the deprivation of “educational opportunity [to Student] that directly correlated to significant

²¹ *Weber v. Cranston Sch. Comm.*, 212 F.3d 41, 51–52 (1st Cir. 2000).

²² *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 12 (1st Cir. 2011) (“In resolving a motion to dismiss, a court should employ a two-pronged approach. It should begin by identifying and disregarding statements in the complaint that merely offer ‘legal conclusion[s] couched as ... fact[]’ or ‘[t]hreadbare recitals of the elements of a cause of action.’ A plaintiff is not entitled to ‘proceed perforce’ by virtue of allegations that merely parrot the elements of the cause of action”).

²³ See *Weber*, 21 F.3d at 51 (“Weber’s claim of retaliation is literally ‘related’ to the identification, evaluation, or educational placement of [her] ‘child.’”); see also *Rose*, 214 F. 3d at 210 (holding all the plaintiff’s claims, including that the school “retaliated against [the student] in response to the [parents]’ efforts to enforce his educational rights,” were subject to the IDEA’s exhaustion requirement because they “relate unmistakably to the evaluation and educational placement of [the student]”); *Fry*, 137 S. Ct. at 752.

²⁴ Parent cites to *Springfield Public School District*, BSEA # 14-04388 (2014) in which Hearing Officer William Crane states that

“the jurisdiction of the BSEA is limited in that BSEA Hearing Officers possess only that power expressly granted... [but that there] may be exceptions to this rule—for example, when a claim is inextricably intertwined with a student’s special education rights such as when a contract between the parties changes the special education responsibilities of a school district. But, ultimately, BSEA jurisdiction must be grounded within the regulations and statute that describe its role and responsibilities.”

However,, in the present matter, Parent fails to indicate how her retaliation claim is “inextricably intertwined with [Student’s] special education rights.”

²⁵ See *Davis v. Monroe County Bd. of Educ.*, 2002 LRP 860 , 526 U.S. 629 (U.S. 1999) (finding that a Georgia district could be liable under Title IX, pointing out that the faculty was aware of the harassment but did not act).

²⁶ *Questions and Answers Regarding the Dep’t of Educ.’s Final Title IX Rule*, 120 LRP 26733 (OCR 09/04/20).

²⁷ See, for example, *In Re: Rafael and the Norton Public Schools (Ruling on School’s Motion to Dismiss)*, BSEA # 160348 (Byrne, 2016).

²⁸ See *Ocasio-Hernandez*, 640 F.3d at 13.

regression, lack of progress, and anxiety, and depression ... [as well as] a fear of school” forms the basis of Student’s complaint. Because the gravamen of the claim is IDEA-based, it requires exhaustion of administrative remedies under the IDEA and survives dismissal.²⁹

ORDER:

The District’s *Motion to Dismiss* is ALLOWED, in part, and DENIED, in part. Parent’s 14th Amendment and retaliation claims are dismissed with prejudice. Parent’s claim that the District’s failure to conduct a Title IX investigation resulted in a denial of a FAPE survives dismissal.

So ordered,

By the Hearing Officer,

s/ Alina Kantor Nir

Alina Kantor Nir

Date: September 21, 2022

²⁹ See *Fry*, 137 S. Ct. at 752; in contrast, see *Doe v. Dallas Indep. Sch. Dist.*, 941 F.3d 224, 227 (5th Cir. 2019) (ruling that parent’s complaint, even though it included allegations related to T.W.’s disabilities and the denial of educational opportunities, was largely about sexual harassment and, as a result, parent did not have to exhaust her administrative remedies under the IDEA before suing a Texas district for its alleged failure to respond to multiple reported incidents of sexual harassment and concluding that if a nondisabled student could bring the same Title IX claim, then a student with a disability does not have to seek relief in an administrative proceeding before suing the district in court).

.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 in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review. 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.