

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

BUREAU OF SPECIAL EDUCATION APPEALS

In Re: Student

&

BSEA #2203555, 2210887

Springfield Public Schools

RULING ON MOTION TO DISMISS OF SPRINGFIELD PUBLIC SCHOOLS

In the instant case, the Springfield Public Schools (Springfield, SPS or District) has filed a *Motion to Dismiss* Parent's fourth hearing request, BSEA #2210887. In pertinent part, Springfield asserts first, that the substance of Parent's claim was addressed and resolved in two mediation agreements, and, second, that the BSEA lacks authority to grant the relief sought by Parent, namely, funding for private MCAS tutoring for Student. Parent counters that her claim for relief arises independently of the mediation agreement, and that she has a right to be heard on that claim.

PROCEDURAL HISTORY

On May 20, 2022, Parent filed a request for hearing (No. 2210887) with the Bureau of Special Education Appeals (BSEA). This case, which has been consolidated via a separate *Ruling* with a previously filed, pending matter, BSEA No. 2203555, alleges that Springfield denied Student a free, appropriate public education (FAPE) by failing to provide him with a highly qualified licensed teacher to serve as his Biology MCAS tutor.

Parent further alleges that the District wrongfully delayed release to Parent of Student's February 2022 Biology MCAS scores and misrepresented to both Parent and the Hearing Officer that the scores had been "embargoed." Parent alleges that, as a result, she was precluded from raising certain claims in BSEA No. 2203555 because she did not receive the MCAS scores until May 2022, which was after a deadline established for her to file an amended hearing request in that case. Lastly, Parent's hearing request contains general allegations of "deliberate indifference," discrimination, and procedural violations that prevent Parent from receiving a fair hearing before the BSEA.

Parent's requested relief, quoted verbatim, below, consists of the following:

1. Parent wants reimbursement of at least \$5000 for the MCAS preparation for each time he must take MCAS until he receives a passing score for the diploma. [T]he district asserted [Student] is on a diploma track and therefore must provide FAPE.
2. An Order that Springfield prevented Parent from including these issues in the current due process hearing by providing false statements to the Parent and Hearing Officer.
3. The district to provide a highly qualified teacher to correct the areas the MCAS portfolio identif[ies] must be met to accept the portfolio.
4. [An] Order District deprived [Student] FAPE by failing to provide the highly qualified teacher.

On May 27, 2022, Springfield filed a *Response* to Parent's hearing request, in which it embedded the above-referenced *Motion to Dismiss* Parent's hearing request in BSEA No. 2210887 in its entirety.

On July 5, 2022, Parent filed a *Response to District's Response to Parent's Hearing Request and Request for Consolidation with Pending BSEA Matter*. In this *Response*, Parent alleges that Springfield violated the terms of the Mediation Agreement executed in October 2021 but asserts that "[e]nforcement of the Mediation Agreement is outside the jurisdiction of the BSEA. Parent further states that notwithstanding the Mediation Agreement, which provided for "executive functioning support" from a "College Steps Mentor," Student was entitled to tutoring from a "highly qualified teacher" to prepare for the Biology MCAS. Parent contends that such entitlement arises from Student's Transition Plan, which contains a goal of obtaining a high school diploma.

On July 14, 2022, the District filed Springfield Public School's *Further Response to Parent's Hearing Request*, based in part on Parent's *Response* of July 5, 2022. In that *Further Response*, Springfield again argues that the parties "specifically negotiated this issue [of provision of a highly qualified teacher for MCAS preparation] through the October 15, 2021 Mediated Agreement and therefore the issue cannot now be reopened at the BSEA."

A Zoom conference call was held on July 21, 2022, during which the parties discussed numerous issues, including those raised in the Motion to Dismiss.

I have determined that oral argument would not be necessary to reach a determination in this matter.

LEGAL STANDARD FOR RULING ON A MOTION TO DISMISS

The legal standard for ruling on a motion to dismiss was discussed exhaustively in my *Ruling on Springfield Public Schools' Motion to Dismiss/Motion for Summary Judgment Relative to Parent's Amended Hearing Request*, issued in BSEA No. 203555 on June 1, 2022. The explanation of that standard as set forth in that *Ruling* is incorporated by reference and will not be restated here, except to summarize the salient elements of the standard. First, 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.¹

Second, 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.² 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.”³ 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.)”⁴

Lastly, 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.⁵ 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 and dismissed “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.”⁶

¹ *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.

² *Caleron-Ortiz v. LaBoy-Alvarado*, 300 F.3d 60 (1st Cir. 2002); *Ocasio-Hernandez v. Fortunato-Burset*, 640 F.3d 1 (1st Cir. 2011).

³ See *Caleron-Ortiz*, *supra*.

⁴ *Bell Atlantic v. Twombly*, 550 U.S. 554, 555 (2007).

⁵ *Leatherman v. Tarrant County NICU*, 507 U.S. 163, 168 (1993).

⁶ *Ahmed v. Rosenblatt*, 118 F.3d 886 (1st Cir. 1997)

RELEVANT FACTUAL ALLEGATIONS

The following factual allegations, derived from Parent's Hearing Request (as clarified by the Mediation Agreement of October 15, 2021, attached to Springfield's *Further Response* as Attachment B), are presumed to be true for purposes of this *Ruling*, only, and are construed in the light most favorable to Parent.

1. One of Student's transition goals is to receive his high school diploma from the Springfield Public Schools and to attend college. Student has completed all high school diploma requirements with the exception of passing the MCAS examination in Biology.
2. On October 15, 2021, the parties participated in mediation with a BSEA mediator and executed an Agreement Reached Through Mediation (hereafter, Mediation Agreement). In pertinent part, the Mediation Agreement states the following:

The Student will work with a College Steps Mentor to provide executive functioning support as the Student works through MCAS Biology material in preparation for Biology MCAS testing. This programming will occur during the Student's College Steps programming hours. The Mentor will work with the Student to complete MCAS Biology prep materials for an MCAS Biology Portfolio. District staff will gather and collate the information for submission of the Portfolio. If the Portfolio is not accepted by DESE, the Student will take the Biology MCAS test. (a) If the Student's DESE Cohort Appeal is accepted, the Student will not create or submit an MCAS Biology Portfolio or sit for the MCAS Biology test.

3. The College Steps Mentor assigned to support Student with executive functioning is not a "highly qualified" fully licensed teacher capable of providing Student with substantive tutoring in biology.
4. Springfield did not provide Student with tutoring in biology from a highly qualified teacher in preparation for the MCAS Biology examination during the period subsequent to the Mediation Agreement. As a result, Student sat for the MCAS examination in February 2022 without having received adequate preparation.
5. The District withheld the results of the February 2022 MCAS Biology examination from Parent until May 2022, and falsely claimed that these results were "embargoed" or unavailable to be

given to Parent prior to that time. As a result, Parent was prejudiced in her ability to advance her claims in BSEA No. 2203555.

POSITIONS OF THE PARTIES

Position of School (Moving Party for the *Motion to Dismiss*)

All issues related to supporting Student's MCAS preparation were addressed and resolved in the Mediation Agreement of October 2021, which cannot be re-visited or enforced by a BSEA hearing officer.⁷ Furthermore, the District has complied with the Mediation Agreement in full. Parent's other allegations lack factual support. Finally, the BSEA lacks authority to order a monetary award to Parent for expenses that have not been incurred.

Position of Parent

Student's Transition Plan specifies pursuit of a high school diploma, which requires that he pass the Biology MCAS; therefore, he has the right to instruction in Biology by a highly qualified teacher in order to receive a FAPE.

DISCUSSION

Claim Relative to Provision of Highly Qualified Teacher

As stated in the above-referenced June 1, 2022, *Ruling on Springfield Public School's Motion to Dismiss/Motion for Summary Judgment Relative to Parent's Amended Hearing Request*,

The mediation agreement issued in October 2021 addressed Springfield's obligations to assist and support Student's pursuit of a portfolio appeal. It appears from Parent's submissions that she either is dissatisfied with the terms of the agreement itself or believes that Springfield has not fully complied with the agreement. The BSEA does not have jurisdiction or authority to either modify or enforce a mediation agreement. Rather, Parent may seek relief in a court of competent jurisdiction and/or may seek to revisit the agreement with the BSEA mediator.⁸ Summary judgment is

⁷Despite this position, in its *Response*, Springfield seeks "enforcement of the mediated agreements, [and] a finding that Parent is in breach of these agreements." As discussed elsewhere in this *Ruling* as well as in a prior *Ruling* on the School's *Motion to Dismiss and for Summary Judgment*, mediation agreements may only be enforced in a court of competent jurisdiction, and not by a BSEA hearing officer.

⁸Mediation agreements are enforceable by a court of competent jurisdiction. Discussions held during mediation are confidential and may not be used as evidence in subsequent legal proceedings. See: 20 USC §1415(e)(3)(2)(F), (G); 34 CFR §300.506(b)(6)-(8);

GRANTED in favor of the School on all issues covered by the mediation agreement of October 2021.

Thus, neither the terms of the Mediation Agreement nor the parties' compliance or non-compliance with that Agreement can or will be addressed in a hearing in the consolidated matter, as this issue was disposed of via summary judgment in favor of the School and will not be revisited.

Viewing all allegations in the most recent hearing request in the light most favorable to Parent, however, it appears that Parent is now claiming that Student was entitled to instruction by a highly qualified teacher to prepare for the Biology MCAS separately from, and/or in addition to, the assistance of the College Steps Mentor and of the District staff responsible for collating biology course materials referred to in the Mediation Agreement.⁹ This claim cannot be resolved through a *Motion to Dismiss*, in which my inquiry is restricted to the adequacy of the allegations in the hearing request. Rather, to address Parent's claim for an entitlement to a highly qualified teacher, I must evaluate evidence such as, for example, the IEP covering April 2021-April 2022 and correspondence or agreements, if any, that mention biology instruction and/or tutoring in addition to the supports covered by the Mediation Agreement. As such, this claim survives the *Motion to Dismiss* insofar as Parent alleges Student's entitlement to a highly qualified teacher for Biology MCAS preparation.

Claim That District Improperly Withheld Student's Test Results

Parent alleges that the District withheld the results of Student's February 2022 Biology MCAS examination until after the deadline that had been established for Parent to amend her hearing request in BSEA No. 2203555. Parent further alleges that the District falsely stated that the MCAS results were unavailable to any parents until May 2022. Parent asserts that the District's alleged withholding of MCAS results and alleged misrepresentations impeded her ability to pursue this litigation because without access to the test scores, Parent was precluded from raising the "highly qualified teacher" claim in No. 2203555. Even if Parent were able to prove that the District concealed information as alleged, such action by the District would not have prevented Parent from raising the claim about provision of a highly qualified teacher (separate from the assistance of the Mentor, as addressed in the Mediated Agreement) in her initial or amended hearing request. In any event, she has raised the issue in her subsequent hearing request. Any claim for relief in the instant matter based on these allegations must be dismissed.

⁹ Parent's submissions do not specify the time period for which she believes Springfield wrongly denied Student the instruction referred to in her hearing request. For purposes of this *Ruling*, I am inferring that the applicable time frame is the period from the execution of the Mediation Agreement until the expiration of the IEP covering April 2021 to April 2022. If this is incorrect, Parent will be instructed to clarify this issue prior to hearing.

Request for payment to Parent for costs of future tutoring

Parent seeks “reimbursement of at least \$5000 for the MCAS preparation for each time he must take MCAS until he receives a passing score for the diploma.” The District is correct that the BSEA may not “reimburse” parents for expenses that have not been incurred; however, given Parent’s *pro se* status, I decline to give such literal meaning to that term. See *Ahmed v. Rosenblatt, supra*. Rather, after viewing the claim in the light most favorable to Parent, I infer that Parent requests a remedy in the form of District funding for a highly qualified, licensed teacher to provide Biology MCAS tutoring and to continue such funding until Student passes the Biology MCAS. Alternatively, Parent anticipates that she will hire such instructor herself and states that she will seek an order for the District to reimburse her for the cost of such instructor. If Parent establishes, by a preponderance of the evidence, that Student was entitled to instruction from a highly qualified teacher during the period or periods in question, and that Springfield failed to provide Student with this service, then I will determine the appropriate remedy, which may or may not incorporate some or all of Parent’s proposed relief. The *Motion to Dismiss* regarding this claim should be denied as premature.

CONCLUSION AND ORDER

For the reasons stated above, Springfield’s *Motion to Dismiss* Parent’s claims set forth in BSEA No. 2210887 is GRANTED in part and DENIED in part as follows:

- a) For all claims related to the adequacy, interpretation or enforcement of the Mediation Agreement executed in October 2021, the *Motion to Dismiss* is GRANTED WITH PREJUDICE.
- b) To the extent that Parent alleges that Student had a right to instruction from a highly qualified teacher to prepare him for the Biology MCAS during the period from the execution of the Mediation Agreement in October 2021 until expiration of the April 2021-April 2022 IEP, separate and apart from the services and supports outlined in the above-referenced Mediation Agreement, the *Motion to Dismiss* is DENIED.
- c) For all claims related to Springfield’s allegedly withholding information about Student’s scores from the February 2022 Biology MCAS examination, the *Motion to Dismiss* is GRANTED WITH PREJUDICE.
- d) For the claim seeking future reimbursement of at least \$5000 for MCAS preparation services, each time Student must take the Biology MCAS examination, the *Motion to Dismiss* is DENIED.

By the Hearing Officer,

/s/ *Sara Berman*

Sara Berman

Dated: September 19, 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 a Motion for Summary Judgment

20 USC §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, 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, §14(3), appeal of a 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 USC §1415(j), “unless the State or local educational 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 th 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.2 910 (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 Appels 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 referring 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 USC §1415(i)(2).

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.