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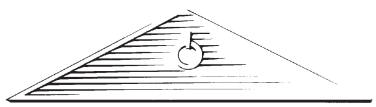

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BSEA Jurisdiction

Perjury

Citing lack of jurisdiction, the Hearing Officer dismissed Student's request for a hearing on a motion alleging that district officials committed perjury in their affidavits. *In Re:Springfield Public Schools (Ruling on Springfield Public Schools' Motion to Dismiss/Motion for Summary Judgment and Ruling on Student's Motion Requesting a Hearing on Perjury Allegations and Motion to Join the Springfield School Committee)*, 30 MSER 111 (2024).

Problem Resolution System

The Hearing Officer denied district's motion to dismiss Parents' hearing request seeking reimbursement for their private funding of reading instruction while their child was attending the Bancroft School. The district had unsuccessfully argued that the PRS had fully resolved the Parents' complaint and that the resultant compensatory service plan for OT services precluded the BSEA from hearing Parents' request for other compensatory relief. *In Re:Wachusett Regional School District (Ruling on Wachusett Regional School District's Motion to Dismiss)*, 30 MSER 56 (2024).

Settlement Agreement

Where a now 24-year-old Student's only possible claims not barred by the statute of limitations stemmed from two mediation agreements, the Hearing Officer found that the BSEA had no jurisdiction to enforce the agreements and granted summary judgement to the district. *In Re:Medway Public Schools (Ruling on Medway Public Schools' Motion to Dismiss and Summary Judgment Ruling)*, 30 MSER 120 (2024).

Statute of Limitations

Finding that most of the claims made by a now 24-year-old Student were barred by the statute of limitations, the Hearing Officer granted summary judgment to the district after further determining that the only claims not time barred involved mediation agreements over which there was also no BSEA jurisdiction. *In Re:Medway Public Schools (Ruling on Medway Public Schools' Motion to Dismiss and Summary Judgment Ruling)*, 30 MSER 120 (2024).

In granting the district's motion to dismiss in part, Hearing Officer Rosa I. Figueroa relied on the two-year statute of limitations, and the Student's 22nd birthday, to limit claims concerning the district's actions in regard to the MCAS appeals process to a four-month period between the end of November 2021 and early April 2022. *In Re:Springfield Public Schools (Ruling on Springfield Public Schools' Motion to Dismiss)*, 30 MSER 10 (2024).

Tort

Hearing Officer Alina Kantor Nir granted the district's motion to dismiss Parents' tort claims alleging negligence and retaliation in a hearing request concerning the placement of their 16-year-old daughter. *In Re:Newburyport Public Schools (Ruling on Newburyport Public Schools' [Partial] Motion to Dismiss Parents' Tor, Retaliation, "Credibility," and Constitutional Claims; Newburyport Schools' Motion for Summary Judgment, and Parents' [Partial] Motion for Summary Judgment)*, 30 MSER 127 (2024).

Transportation

Granting the Worcester Public Schools' motion to dismiss in part, Hearing Officer Amy M. Reichbach found there was no evidence that the Team had recommended specialized transportation for the Student and that there was no jurisdiction for the BSEA to order it. *In Re:Worcester Public Schools (Ruling on Worcester Public Schools' Motion to Dismiss)*, 30 MSER 150 (2024).

Classroom Assignment

General

After finding Parents' challenge to their son's vocational shop assignment was akin to disputes over general education classroom assignments, the Hearing Officer nevertheless denied the vocational school's motion to dismiss and motion for summary judgment. The Hearing Officer held that while she would not be able to order a change in assignment, she would be able to determine if the Student had been denied a FAPE and whether the Student's IEP could be implemented in his current shop assignment with additional supports and services. *In Re:Old Colony Regional Vocational Technical Public School (Ruling On Old Colony Regional Vocational Technical Public School's Motion to Dismiss/Motion for Summary Judgment and on Parents' Amended Hearing Request and Supplemental Request for Relief)*, 30 MSER 96 (2024).

Compensatory Services

General

Where the district argued that a hearing is necessary to ascertain whether a 20-year-old Student has skill deficits caused by an alleged interruption of services, Hearing Officer Rosa I. Figueroa denied a 20-year-old Student's motion for summary judgment and found that there were genuine issues of material fact regarding his right to compensatory services. *In Re:Boston Public Schools (Ruling on Student's Motion for Summary Judgment)*, 30 MSER 124 (2024).

Parental Cooperation

Where Parents rejected the Brockton Public Schools' offers of tutoring and other services while their son was awaiting a start date at his placement at CABI, the district was not responsible for additional compensatory services for a now 22-year-old Student with autism and an intellectual disability, even though the young man was home, without a placement, for almost a year. At the time of the hearing, Brockton had maintained the Student's placement at CABI for six months past his 22nd birthday. *In Re:Brockton Public Schools (Decision)*, 30 MSER 45 (2024).

Consent/Parental

Assessment

Where there had been no assessments of Student since 2018, Hearing Officer Alina Kantor Nir granted the Greater Commonwealth Virtual School's request for substitute consent to conduct a three-year re-evaluation of an eighth grader with an ADHD diagnosis. *In Re:Greater Commonwealth Virtual School (Decision)*, 30 MSER 144 (2024).

Where mother had requested and consented to a second initial evaluation, after the first evaluation had resulted in a finding of no eligibility, the district was required to move forward despite the father's objection. *In Re:Natick Public Schools (Ruling on Natick Public Schools' Motion for Summary Judgment)*, 30 MSER 43 (2024).

Eligibility Criteria/Disabilities

Autism/PDD

The Brockton Public Schools was not responsible for additional compensatory services for a now 22-year-old Student with autism and an intellectual disability, even though the young man was home, without a placement, for almost a year. Parents had rejected the district's offers of tutoring and other services while the Student was awaiting a start date for his placement at CABI and had refused to consent to sending packets to other programs. *In Re:Brockton Public Schools (Decision)*, 30 MSER 45 (2024).

Hearing Officer Marguerite M. Mitchell found that the Springfield Public Schools did not unlawfully discriminate against a Student with an autism diagnosis in violation of Section 504 while he was enrolled in a post-secondary program. The Hearing Officer also held that Parent and Student failed to show that the Student was entitled to a licensed biology or special education teacher as a tutor to support him in preparing for a retake of the MCAS biology examination. *In Re:Springfield Public Schools (Decision)*, 30 MSER 18 (2024).

Behavioral Issues

Hearing Officer Alina Kantor Nir awarded substitute consent to the Pittsfield Public Schools to have an extended evaluation performed for a fourth grader who was eligible for special education services due to escalating behavioral issues. *In Re:Pittsfield Public Schools (Decision)*, 30 MSER 89 (2024).

Specific Learning Disability

Where the district did not initially propose appropriate IEPs for a sixth grader with a specific learning disability in reading, writing, and math, the Hearing Officer found Parent was entitled to equitable reimbursement for her decision to unilaterally place her son at the Learning Prep School for the 2023-2024 school year, up to the date of the Hearing Officer's decision. *In Re:Framingham Public Schools (Decision)*, 30 MSER 65 (2024).

Evaluation (see also Team Evaluation; Re-evaluation; Evaluation, Independent)

Refusal of Parent to Allow

Where an eighth grader with an ADHD diagnosis had not been evaluated since the second grade, the Hearing Officer granted the district's request for substitute consent to conduct a three-year re-evaluation. *In Re:Greater Commonwealth Virtual School (Decision)*, 30 MSER 144 (2024).

Over Parents' objection to the district's proposed plan to have their son evaluated at the Crosby Academy, and have an updated Functional Behavioral Assessment performed in a therapeutic setting, the Hearing Officer awarded substitute consent to the Pittsfield Public Schools to have an extended evaluation performed for the fourth grader, who was eligible for special education services due to behavioral issues. *In Re:Pittsfield Public Schools (Decision)*, 30 MSER 89 (2024).

Hearing Officer Catherine Putney-Yaceshyn granted the Natick Public Schools' motion for summary judgment on a hearing request filed by the Student's father seeking to stop any further evaluations of the Student. Where the parents shared educational decision-making authority, and the mother had consented to a second initial evaluation after the first resulted a finding of no eligibility, the district was required to move forward with the evaluation despite the father's objection. *In Re:Natick Public Schools (Ruling on Natick Public Schools' Motion for Summary Judgment)*, 30 MSER 43 (2024).

Graduation

Qualification

Hearing Officer Rosa I. Figueroa dismissed Student's claims that fell outside of the two-year statute of limitations, as well as claims alleging that the district's actions violated the Parent and Student's due process rights under the 14th Amendment of the Constitution. Student asserted that the district violated his rights when he did not receive a diploma after he failed to pass the MCAS biology examination and was not granted a waiver of the requirement. The Hearing Officer also held that the BSEA did not have the jurisdiction to order the Superintendent to file an MCAS performance appeal on the Student's behalf. *In Re:Springfield Public Schools (Ruling on Springfield Public Schools' Motion to Dismiss)*, 30 MSER 10 (2024).

Individualized Education Program

Modification

Although district proposed a modified IEP in October 2023 that would provide a sixth grader with a FAPE in the least restrictive environment, the Hearing Officer held that Parent was entitled to equitable reimbursement for her decision to unilaterally place her son at the Learning Prep School for the 2023-2024 school year, after finding that the four earlier IEPs proposed by the district had inappropriately reduced C-Grid and Wilson reading services. *In Re:Framingham Public Schools (Decision)*, 30 MSER 65 (2024).

Least Restrictive Environment

Inclusion Model

Hearing Officer Marguerite M. Mitchell found that the IEP proposed by the district in October 2023 cured deficiencies in four earlier IEPs and held that a sixth grader would receive a FAPE in a full-inclusion program at the public middle school. The Hearing Officer ordered reimbursement for the cost of the Parent's unilateral placement of her son at the Learning Prep School only through the date of her decision, and not for the entire 2023-2024 school year. *In Re:Framingham Public Schools (Decision)*, 30 MSER 65 (2024).

Residential Placement

Despite the fact that a residential placement was not the least restrictive environment, the district acted appropriately in seeking a residential placement in lieu of a day placement when the referrals to day placements did not yield any acceptances. Parents had refused the district's request to send referrals to DESE-approved residential programs and demanded that the district create a program within the district for their 16-year-old daughter with autism or fund their self-created home program. *In Re:Newburyport Public Schools (Ruling on Newburyport Public Schools' [Partial] Motion to Dismiss Parents' Tor, Retaliation, "Credibility," and Constitutional Claims; Newburyport Schools' Motion for Summary Judgment, and Parents' [Partial] Motion for Summary Judgment)*, 30 MSER 127 (2024).

Local Education Agency

Responsible Community

The Hearing Officer rejected the Wachusett Regional School District's assertion that the Worcester Public Schools was the responsible community in a hearing request where Parents alleged Wachusett had denied their child a FAPE and was seeking reimbursement for their decision to unilaterally place the Student at the Bancroft School in Worcester. *In Re:Wachusett Regional School District (Ruling on Wachusett Regional School District's Motion to Dismiss)*, 30 MSER 56 (2024).

MCAS

Post-Secondary Placements

The Hearing Officer held that Parent and Student failed to show that the Student, who was in a post-secondary placement, was entitled to a licensed biology or special education teacher as a tutor to support him in preparing for a retake of the MCAS biology examination. *In Re:Springfield Public Schools (Decision)*, 30 MSER 18 (2024).

Cumulative BSEA Decisions Cited–January-June 2024

Cumulative Cases Cited–January-June 2024

In Re: SPRINGFIELD PUBLIC SCHOOLS

BSEA # 2405038

May 17, 2024
Rosa I. Figueroa, Hearing Officer

***Motion to Dismiss-Res Judicata-Collateral Estoppel-Jurisdiction-Perjury Allegations-Joinder*—**In the latest in a string of due process hearing requests filed by a now 24-year-old Student concerning the Springfield Public Schools' failure to issue him a diploma and other related allegations, Hearing Officer Rosa I. Figueroa granted the district's motion to dismiss the request in its entirety, with prejudice, on res judicata and collateral estoppel grounds. Finding that the Student had raised no new claims, the Hearing Officer noted that federal district court, where he has pending appeals in most, if not all, of the prior BSEA decisions, is the venue for him to address any remaining concerns. Citing lack of jurisdiction, the Hearing Officer also dismissed Student's request for a hearing on its motion alleging that district officials committed perjury in their affidavits, as well as his request for joinder of the School Committee.

RULING ON SPRINGFIELD PUBLIC SCHOOL'S MOTION TO DISMISS PARENT (SIC)/MOTION FOR SUMMARY JUDGMENT; RULING ON STUDENT'S MOTION; RULING ON STUDENT'S MOTION REQUESTING A HEARING ON PERJURY ALLEGATIONS; RULING ON STUDENT'S MOTION TO JOIN THE SPRINGFIELD SCHOOL COMMITTEE AND EVIDENTIARY HEARING

On March 7, 2024[1], Student[2] filed a "*Motion"* in the above-referenced matter, in which he asserted that the "argument and supporting laws provide sufficient grounds to move forward in the BSEA." Though simply titled "Motion", given its timing and content, this document appears to be Student's attempt to clarify the remaining issues for hearing, as Student was ordered to do on February 2, 2024.[3]

On March 28, 2024, Springfield Public Schools (Springfield or District) filed a *Motion to Dismiss Parent (sic)/Motion for Summary Judgment* seeking to dismiss the claims surviving the BSEA's Ruling of January 24, 2024 [30 MSER 10], dismissing several, but not all, of Student's claims. Springfield argued that based on the undisputed facts including the evidence and previous BSEA rulings and decisions, "there are no genuine issues of material fact on any element of [Student's] claim upon which relief can be granted".

Student responded to Springfield's Motion on April 11, 2024. On April 21, 2024, Student submitted an additional document (Student's Transition Plan Form) which he had inadvertently omitted previously.

On or about April 3, 2024, Student filed a *Motion to Request, Motion Hearing on Springfield's filing and Present Evidence of Affidavit, Perjury*".

The District responded on April 5, 2024, denying the "bad faith with gross misjudgment or deliberate indifference", "retaliatory practices", "disability discrimination" and perjury allegations raised by Student, noting Student's failure to link any of the documents forwarded to her specific claims of false statements.

On April 7, 2024, Student filed a *Response to [Springfield Public Schools'] Evidentiary Hearing Response*.

On May 6, 2024, Student filed a *Motion to Join the Springfield School Committee and Evidentiary Hearing*.

On May 13, 2024, Springfield filed a *Response and Opposition to Parent's Motion to Join Springfield School Committee*.

On May 16, 2023, Student responded to the District's *Response and Opposition to Parent's Motion to Join Springfield School Committee*.

Lastly, Student again objected to the District's waiver of the Resolution Session. This issue was previously discussed and addressed in *In Re: Springfield Public Schools and Ollie Ruling on Eight Items of Relief*, 28 MSER 29 (Berman, 2/23/2022) involving the same Parties, finding that per the IDEA, if a school district fails to convene a resolution session within the first 15 days after receipt of a parent/student initiated Hearing Request, the parent/student is no longer prevented from proceeding to a hearing on the merits. No other remedy exists for the parent/student under the IDEA for such a waiver of the Resolution Session.

This Ruling is issued in consideration of the Parties' submissions, the previous BSEA Decisions in *Ollie I* [26 MSER 275], *Ollie II* [27 MSER 158] and BSEA# 2309351, and the *Ruling on Defendant's Motion to Dismiss* in *In Re: Parent and Student* v. *Springfield Public Schools, Springfield School Committee (Including Melinda Phelps), DESE and Murphy, Hessee, Toomey & Lehane*, BSEA #2309351 [29 MSER 154] (Mitchell, 6/12/23) (hereinafter "Ruling in BSEA #2309351") regarding the same parties. Because a hearing would not advance my understanding of the issues, this matter is being decided on submission of documents only. In this regard, Student's request for Hearing to address the perjury allegations is **DENIED**, as explained later in this Ruling.

1. On or about March 5 and 6, 2024, Student requested a 48-hour extension of time to file the clarification of issues ordered on February 2, 2024. On March 6, 2024, shortly after Student's request was granted, the District filed a request for an extension of time to file a Motion for Summary Judgment (and/or Motion to Dismiss) through the last day of March 2024. This request was also granted on March 6, 2024.

2. Student, who is over 22 years old is represented by Parent who is employed as a special education advocate with special knowledge in the field of special education in Massachusetts.

3. Rather than provide clarity, this document was convoluted, disorganized and does not list the remaining issues for Hearing in a clear, simple and straightforward manner. Thus, the information and issues delineated above are this Hearing Officer's attempt to decipher Student's claims.

ORDER

1. Medway's *Motion to Dismiss* is **Denied**.

2. Summary Judgment is **GRANTED** in favor of Medway.

So Ordered by the Hearing Officer,

* * * * * *

In Re: BOSTON PUBLIC SCHOOLS

BSEA # 2403492

June 5, 2024
Rosa I. Figueroa, Hearing Officer

Practice and Procedure-Summary Judgment-Stay Put-Compensatory Services—Hearing Officer Rosa I. Figueroa denied a 20-year-old Student's motion for summary judgment and found that there were genuine issues of material fact regarding his right to a stay-put placement and compensatory services. The Boston Public Schools asserted that the Student had completed all graduation requirements and that a hearing was necessary to determine whether the IEPs it had proposed offered him a FAPE and whether Student had skill deficits caused by an interruption of services which would entitle him to compensatory relief. Student had rejected the last IEP proposed by the Team which called for his graduation from high school in June 2023, and filed the hearing request after he had been sent home when he attempted to attend classes at the Boston Community Leadership Academy in September 2023.

CORRECTED RULING ON STUDENT'S MOTION FOR SUMMARY JUDGMENT

On October 5, 2023, Student filed a Hearing Request, in the above-referenced matter. The initial Notice of Hearing scheduled the hearing for November 9, 2023.

On October 16, 2023, Boston Public Schools (Boston or District) moved for a one-week extension of time to file the Response to Student's Hearing Request,[1] noting that the District had not received the Request for Hearing or Notice of Hearing until October 16, 2023.[2] Boston's Response to the Hearing Request was received on October 23, 2023.

This matter was administratively reassigned to the undersigned Hearing Officer on October 24, 2023.

On November 8, 2023, with Student's assent, Boston requested, and was granted, a postponement of the hearing so that the Parties could participate in mediation. At the Parties' request the Hearing was continued to February 27 and 28, 2024.

On February 21, 2024, the Parties filed a joint *Motion to Continue the Hearing*. The BSEA granted the Parties' request and the hearing was continued to April 8 and 9, 2024. An additional request for postponement was received on March 25, 2024, because the Parties were attempting to resolve the case informally and required additional time. At the request of the Parties, the Hearing was continued to June 11 and 12, 2024. Boston also requested the scheduling of a pre-hearing conference to further clarify the issues for Hearing.

On March 26, 2024, Student filed a *Motion for Summary Judgment* seeking implementation of his stay-put placement and compensatory services consistent with his last agreed upon IEP. Student further sought reimbursement for educational costs incurred as a result of Boston's "noncompliance" with Student's stay-put IEP during the 2023-2024 school year.

A *Joint Motion to Stay the Ruling on Parent's Motion for Summary Judgment and Continue Boston's Response* through May of 2024, was received on April 9, 2024. The ruling on the Motion for Summary Judgment was stayed and the Hearing remained scheduled to proceed in June 2024 consistent with the previous scheduling Order.

On May 1, 2024, Boston filed an *Opposition to Student's Motion for Summary Judgment*. Boston's Opposition contained nine exhibits identified as SE-1 to SE-9.

This Ruling is issued in consideration of the Parties' submissions, including school exhibits S-1 through SE-9.

HISTORICAL, PROCEDURAL AND FACTUAL[3] BACKGROUND

1. Student is a 20 year-old resident of Boston, Massachusetts. He lives with Parent, who is his Court Appointed Guardian (hereinafter "Parent"). Student has granted Parent authority to represent his educational interests.

2. Student carries diagnoses of Autism and attention deficit hyperactivity disorder (ADHD). He is an IDEA eligible student and most recently has received educational services at Boston Community Leadership Academy (BCLA), though the Autism full inclusion program. (SE-3; SE-4; SE-6).

3. On February 24, 2021, Student's Team convened for an Annual Review. While the Team determined that Student had met all state and local requirements for graduation, it ultimately proposed that Student complete an additional year of high school to focus on transition-specific skills, while participating in a dual enrollment program at a local college. At the time of this meeting, Student was participating in work-based learning experiences and was enrolled in a pre-employment transition program.

4. As a result of the February 2021 Annual Review meeting, Boston proposed an IEP for the period from February 24, 2021, to February 24, 2022. Parent fully accepted this IEP on Student's behalf, on October 18, 2021. (SE-3).

5. On January 20, 2022, the Team re-convened to conduct another Annual Review. During the meeting, Parent expressed concern

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1. Student assented to this request.

2. A re-calculated Notice of Hearing was not issued.

3. The factual statements appearing herein are taken as true for purposes of this ruling only.

In Re: NEWBURYPORT PUBLIC SCHOOLS

BSEA # 2411365

June 10, 2024
Alina Kantor Nir, Hearing Officer

Motion to Dismiss-Summary Judgment-Jurisdiction-Tort Claims-Constitutional Violation-Placement-Least Restrictive Environment—On cross motions for partial summary judgment, Hearing Officer Alina Kantor Nir denied Parents' motion and granted partial summary judgment to the Newburyport Public Schools on seven of Parents' 15 claims. The Hearing Officer also allowed the district's motion to dismiss their remaining claims asserting negligence and retaliation, as well as one claim alleging a constitutional violation. Parents contended that Newburyport had erred when it did not create an in-district program for their 16-year-old daughter, and when it sought a residential placement for her after its referrals to day programs came up empty. In May 2021, Parents had unilaterally withdrawn their daughter, who carried a Level 3 autism diagnosis, from a private day program funded by the district, and the teenager had not attended a school program since then. Parents had refused the district's request to send referrals to DESE-approved residential programs and demanded the district create a program for her or fund their home program. Noting that there were no peers in the district, the Hearing Officer held that Newburyport was not obligated to create an in-district placement. In addition, where the Team has not identified the home as an appropriate placement, the Hearing Officer also rejected Parents' alternative argument that the district should fund their non-DESE approved home program.

RULING ON NEWBURYPORT PUBLIC SCHOOLS' [PARTIAL] MOTION TO DISMISS PARENTS' TORT, RETALIATION, "CREDIBILTY," AND CONSTITUTIONAL CLAIMS; NEWBURPORT PUBLIC SCHOOLS' MOTION FOR SUMMARY JUDGMENT, AND PARENTS' [PARTIAL] MOTION FOR SUMMARY JUDGMENT

This matter comes before the Hearing Officer on *Newburyport Public Schools' [Partial] Motion To Dismiss Parents' Tort, Retaliation, "Credibility," And Constitutional Claims (District's [Partial] Motion to Dismiss), Newburyport Public Schools' Motion for Summary Judgment (District's Motion for Summary Judgment*) (together, the *District's Motions*) filed on May 20, 2024[1] , and on *Parents' [Partial] Motion for Summary Judgment* filed on May 28, 2024.

The *District's Motion to Dismiss* seeks dismissal of "some of the Parents' claims on the grounds that of the fifteen (15) issues raised in this matter, eight (8) issues are claims in tort, claims of retaliation, a claim of the lack of 'credibility' resulting in 'harm,' and a Constitutional claim," all of the type "previously dismissed… (albeit for a different time period)… by this Hearing Officer for lack of jurisdiction in a November 4, 2023, Ruling in the matter of BSEA # 2311471 [and] 2401600." [29 MSER 366]

In the *District's Motion for Summary Judgment*, Newburyport contends that there is no genuine issue of material fact and Newburyport is entitled to prevail as a matter of law. Specifically, the District asserts that the BSEA may not order the District "to do something it is not legally obligated to do," such as create an in-District program or fund Parents' home program. Newburyport further asserts that a homebound setting is the most restrictive environment for a student, not, as Parents assert, the least restrictive environment (LRE) given the lack of private day programs for Student. Moreover, according to the District, Parents have obstructed its efforts to provide the student a free appropriate public education (FAPE), making Parents ineligible for relief, including equitable remedies. Last, the District argues that Parents incorrectly claim that Student's graduation date should be changed based on the parties' November 2023 Agreement, as not only does the Hearing Officer lack jurisdiction to interpret or enforce settlement agreements, but a Hearing Officer cannot extend a student's eligibility beyond her legitimate graduation from high school or "aging out" at age 22, as will likely be the case for this Student.

On May 28, 2024, Parents filed *Parents' Response To District's [Partial] Motion To Dismiss Parents' Tort, Retaliation, Credibility, And Constitutional Claims (Response to [Partial] Motion to Dismiss)* asserting that their claims are within the BSEA's subject matter jurisdiction. Parents also filed *Parents' Opposition to Newburyport Public Schools' Motion For Summary Judgment (Parents' Opposition*) asserting that the BSEA has authority to order the District to create a program for Student and that the creation of an in-District program provides Student a FAPE in the LRE and is appropriate under the circumstances.

In addition, on May 28, 2024, Parents filed *Parents' [Partial] Motion for Summary Judgment*, moving "for summary judgement on the Issue #1 as stated within the instant matter" and "if summary judgment is granted, proceedings will be held on the remaining issues (modeled after both the Massachusetts and Federal Rules of Civil Procedure, Rule 56, Summary Judgment). Parents[ ] move for the District to create an in-District program for Student as District's inaction to provide Student a FAPE continues to cause irreparable harm and Student and Parents[ ] are entitled to judgment as a matter of law." On May 31, 2024, Newburyport filed its *Opposition to Parents' [Partial] Motion for Summary Judgment* (*District's Opposition*) asserting that "[b]ut for the Parents' statement that the Student resides in Newburyport and, as a student eligible for special education, she is entitled to an educational placement, the Parents' arguments … are disputed issues relating to the District's defense of the Parents' claims. The Parents set forth no cogent undisputed legal arguments permitting Summary Judgment in their favor. Therefore, as a matter of law, the BSEA must deny the Parents' Motion for Summary Judgment."

Neither party has requested a hearing on any of the motions addressed in this Ruling. 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 [Partial] *Motion to Dismiss* is ALLOWED. The *District's Motion for Summary*

1. As the *District's Motions* were filed after 5PM on May 20, 2024, they are deemed to have been filed on the next business day, May 21, 2024.

Paige L. Tobin, Esq.
Murphy, Lamere & Murphy, P.C.

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Why Can't We All Just Get Along?

Well-intentioned people can agree or disagree about whether a student's IEP offers FAPE, whether a student has made effective educational progress, and how to address any perceived deficiencies in a special education program. The IDEA is designed for this, with its emphasis on team collaboration, parent participation, and due process procedures to address areas of disagreement. Massachusetts special education regulations support and enhance the structure established by the IDEA. The structure has functioned well for many years, allowing school districts and parents to work together to create an IEP that is designed to serve the best interests of the child. In reviewing the rulings and decisions from this quarter, it is evident that something has changed. But what?

In Re: Brockton Public Schools and Benjamin, 30 MSER 45 (Reichbach, 2024)[1] is a cautionary tale for parents whose actions, even well-intentioned, obstruct a school district's attempts to provide FAPE to a student. In this case, the Student moved with his parent from Hingham to Brockton in February 2020 during an extended evaluation at the League School, an approved special education school designed for children with complex disabilities, including autism. The extended evaluation determined that Student continued to require a day school placement appropriate for students with autism, but that the League School could not meet the Student's significant needs. Brockton agreed to send referral packets to appropriate day schools for the Student's placement. Shortly after the student moved to Brockton, and while student was awaiting placement, all schools were shuttered upon orders of the Massachusetts governor due to the global pandemic. During the pandemic, Brockton offered a Chromebook and access to virtual educational services in an in-district substantially separate program, but the Student only participated for one day.

In October 2020, Student was accepted at the Darnell School with a January 2021 start date. Student attended Darnell School until he was terminated in June 2021. Following Student's termination from Darnell, Brockton, upon Parents' request, sent a referral packet to another approved day school, CABI, located in Worcester, Massachusetts. When CABI informed the parties in August 2021 that Student was accepted but with no date certain to start due to staffing shortages, Brockton suggested sending referral packets to other schools, but the parent declined and determined to wait for an opening at CABI.

What follows is a long and tortured tale of Brockton's sustained and multiple good faith efforts to provide educational and related services to Student and the parents' equally sustained efforts to frustrate the process. The Hearing Officer found that "As the months went on, Brockton encouraged Parents to consider granting consent to send packets to other placements that had openings, but in each instance Parents refused. Several times, Mother reached out to request tutoring. Each time, and in additional instances, Brockton offered to provide academic tutoring and OT and/or speech and language services. Mother refused the times offered, and suggested different times and locations but then when new logistics were arranged, she stated those would not work, or failed to follow up with tutors. Ultimately, Parents did not cooperate with Brockton's attempts to provide academic, OT, or speech and language services to Benjamin while he was out of school awaiting an opening at CABI." Ultimately, a seat opened up at CABI in July 2022 and Student began CABI, almost one year after the termination of his last placement. Brockton convened a team to develop an IEP and to consider whether the Student should receive compensatory services for the year-long period in which he missed school. Brockton offered to provide three months of compensatory services, but the Parent indicated that she would never sign an agreement with Brockton, making it impossible for them to resolve the compensatory services claim. The Student turned 22 without an accepted plan for compensatory services and the parent filed the hearing request with the BSEA. As more evidence of good faith, Brockton sought a waiver from DESE to allow the Student to remain at CABI past his 22nd birthday and until the BSEA hearing occurred and the Hearing Officer rendered her decision. The Student received six months of compensatory services by the time that the hearing concluded.

In denying the parents' request for a significant award of additional compensatory services, the Hearing Officer noted that "The IDEA entails a collaborative process between school districts and parents in the provision of a FAPE. Consistent with this maxim, in formulating the IDEA, Congress "expressly declared that if parents act unreasonably in the course of that [interactive] process, they may be barred from reimbursement." The Hearing Officer found that the student was denied a FAPE during the eleven months that he was awaiting placement, and the parents' refusal to

1. The author of this commentary proudly represented Brockton Public Schools in the BSEA case.

allow Brockton to send referral packets to additional schools and unwillingness to cooperate with Brockton's attempts to provide interim services were "unreasonable."

While the *Brockton* decision considers lack of cooperation during the IEP process, a startling ruling issued during this quarter considers contentious conduct during the hearing process. *In Re: Springfield Public Schools*, 30 MSER 15 (Mitchell, 2024), addresses a motion by Springfield to strike the parent's Opening Statement at a BSEA hearing on the grounds that the statement was "offensive and beyond the bounds of decency," "untruthful" and contained "personal attacks" not relevant to the hearing issues. Counsel for Springfield also objected to the Hearing Officer's use of the muting function to mute them during the virtual hearing when the parties apparently engaged in a heated argument while on the record. In allowing the motion to strike in limited part, the Hearing Officer noted that she threatened sanctions against the parent if she continued to engage in disrespectful behavior during the hearing. The Hearing Officer denied Springfield's objection to the muting of its counsel during the hearing, noting that both parties were simultaneously muted for a minimal time, which the Hearing Officer asserted was both "appropriate and necessary" for an orderly hearing process.

Both *Brockton* and *Springfield* illustrate clearly what has changed in special education—people have stopped working collaboratively together. Whether this is a consequence of a broader lack of civility in society or the myriad of stressors parents and educators face is unclear. What is clear, however, is that the IDEA functions best when all parties collaborate in the shared goal of meeting the special education needs of the student. Generally, the collaboration happens best when school districts follow the process, when parents are provided with robust opportunities to participate, and when disagreements are addressed as soon as possible. Sometimes, however, parties engage in unfortunate actions which intentionally and personally attack educators and those that support them. This is not acceptable conduct and should be addressed swiftly by Hearing Officers, if not only to support the rule of law, but also to best serve the students at the center of these disputes.

TIPS FOR SCHOOL DISTRICTS:

1. In cases where parents refuse district proposals for services or placement, document all proposals and actions. Documentation is the best defense;

2. Document all communications with parents, even over issues as minor as scheduling;

3. Establish communication protocols to limit communications that harass and intimidate educational staff;

4. Consider the use of the Facilitated IEP process when parents obstruct team meetings or process;

5. Consider mediation when disagreements first arise; and

6. Remain focused on the needs of the student and consider how the district's actions will appear to a Hearing Officer. ■

MSER Commentary *First Quarter 2024*

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INTRODUCTION

The first quarter of 2024 marked another quiet one for the BSEA, during which it issued only two decisions and ten rulings. Both decisions, *Brockton* and *Springfield*, are discussed in detail within this commentary. Parents were unsuccessful in both hearings; in *Brockton*, however, the parents won the battle but ultimately lost the war. The rulings continued to address the usual range of topics, such as discovery, joinder of necessary parties, and the contours of the BSEA's jurisdiction.

PARENTS WITHOUT REMEDY DESPITE DISTRICT'S FAILURE TO PROVIDE STUDENT WITH A FAPE

Brockton Public Schools and Benjamin, BSEA No. 2401643, 30 MSER 45 (Reichbach, March 13, 2024) considered what remedy, if any, would be appropriate to compensate a student for a nearly year-long failure by the district to provide him with a free appropriate public education (FAPE). At the time of hearing, the student at the center of the dispute, Benjamin, was twenty-two years old. Due to his significant and complex disabilities, Brockton had placed him in a series of out-of-district placements. While Benjamin was progressing quite well within his placement at the Center for Applied Behavioral Instruction (CABI), the parents initiated a hearing challenging the eleven-month period during which he was without any educational placement before his enrollment at CABI commenced in July 2022.

In June 2021, over year earlier, Benjamin had been terminated from his prior placement at the Darnell School (Darnell), an approved private special education school. The next day, Brockton initiated a referral to CABI at the parents' request. Benjamin was accepted to CABI in August 2021; however, in light of pandemic-related staffing shortages, CABI could not specify a start date. In response, the district undertook efforts to arrange and provide for various tutoring services at various times and locations pending Benjamin's placement at CABI, all while expressing its willingness to send referrals to other programs and maintaining regular contact with CABI and the parents. The parents declined the district's offers at every turn, and, in July 2022, without having received any interim services, Benjamin finally enrolled at CABI. Acknowledging that it owed Benjamin some level of compensatory education, the District agreed to continue to fund Benjamin's placement at CABI for six months following his upcoming twenty-second birthday (and the natural termination of his special education eligibility due to his age).

The majority of special education disputes center on the appropriateness of a student's proposed Individualized Education Program (IEP). This case, however, focused on the district's failure to implement his IEP—a mater to which the district stipulated—and, relatedly, the form of any potential compensatory remedy. In general, "compensatory education is not an automatic entitlement, but rather, a discretionary remedy for nonfeasance or misfeasance in connection with the school system's obligations under the IDEA." While the hearing officer readily found that the district materially failed to implement Benjamin's IEP, and that he likely experienced both academic and behavioral loss during that period of violation, she exercised her discretion to deny any award of compensatory education.

At first glance, this result appears harsh. However, through careful analysis, the hearing officer reasoned that the parents had undercut the IDEA's collaborative process, by acting unreasonably (even if they were initially well-meaning) in refusing to explore alternatives to CABI and failing to make Benjamin available for in-person academic and related services. In contrast, the hearing officer found the district to be diligent in its monitoring the status of Benjamin's acceptance at CABI throughout the delay and its efforts to secure another placement and services for Benjamin. Further considering the district's voluntary six-month extension of Benjamin's special education eligibility, the hearing officer concluded that placing the entire burden for compensatory education on the district would therefore amount to an "unfair penalty." As parties approach questions of what compensatory education may be due, even in cases where there is an indisputable violation of a student's rights, it is important to remember that a hearing officer's equitable discretion in fashioning relief is wide, and the entirety of the surrounding circumstances will help inform their ultimate determination on the issue.

STUDENT NOT ENTITLED TO MCAS TUTORING FROM A SPECIAL EDUCATION OR LICENSED SUBJECT TEACHER

Springfield Public Schools, 30 MSER 18, BSEA# 2309351 (Mitchell, January 25, 2024) involved parties who had been before the BSEA myriad times, resulting in seven previous written rulings. The one facet of this particular decision that we comment on is the parent's unsuccessful attempt to have Springfield provide a licensed biology or special education teacher as a tutor to support the student in preparing for his retake of the biology MCAS exam while he was enrolled in the post-secondary College Steps Program at American International College ("AIC"). The student alleged that because he was not given that support, he did not pass the MCAS and was not able to obtain his high school diploma before turning twenty-two.

The reauthorization of the IDEA in 2015 under the Every Student Succeeds Act (ESSA) eliminated the definition of "highly qualified" from the IDEA. Rather, ESSA delegated to the individual states the sole authority to determine teacher certification requirements. ESSA and Massachusetts law maintained the obligation to require that eligible students with disabilities be provided with their special education and related services under the IDEA by properly licensed or certified teachers, related service providers and paraprofessionals. It is important to note that it is extremely difficult for a parent to insist that the district's service providers have certain qualifications. The need for specialized qualifications must be supported by strong expert support. Here, no federal or state law required that the student be provided with a licensed biology or special education teacher to tutor him in preparation for the biology MCAS retake.

Although offered, at no time during the 2020-2021 school year did the parent consent to the student being tutored or otherwise provided with any support to prepare to retake the biology MCAS, and thus no tutoring or other such supports occurred during that school year. Included in the student's 2021-2022 IEP was a recommendation that he avail himself of tutoring and retake the biology MCAS. The district offered two sources of MCAS tutoring: from Pioneer Valley Tutoring Services, associated with AIC, and an additional ten hours of tutoring from the district. The parent's partial rejection of this IEP included a statement: "Goal 1, 2 Tutoring by Gen ed/Para is not what was agreed to." After a meeting to discuss this rejection, the parent again rejected the offer of in-person tutoring by the district, partly because some of it was to be provided in a school area the parent felt was unsafe. At an October 2021 mediation, the parties agreed, relative to the MCAS tutoring: "the Student will work with a College Step's (sic) Mentor to provide executive functioning support as the Student works through MCAS Biology in preparation for Biology MCAS testing. This programming will occur during the Student's College Steps daily programming hours. The Mentor will work with the Student to complete Biology MCAS 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." The district thereafter never wavered in its efforts to deliver the tutoring.

The first time the parent requested a licensed biology or special education teacher for the biology MCAS was after the mediation agreement and with regard to assistance in preparing his MCAS portfolio, not with regard to provision of services related to his retaking of the MCAS. That requirement was also not in the mediation agreement. In addition, the supports the student was to receive to prepare him to retake the biology MCAS were not special education or related services, nor were they part of the student's IEP. Additionally, the district representatives testified convincingly that the work associated with completing the "biology MCAS prep materials" did not involve teaching any curriculum. Instead, it consisted of reviewing information the student had already been taught and making note of the areas he needed to review further.

Therefore, the parent had no basis to assert that the district was required to provide a licensed biology or special education teacher to assist with the biology MCAS.

WHEN PARENTS DISAGREE

As parent-side practitioners, we periodically confront questions about what happens when parents disagree. *Natick Public Schools*, BSEA No. 2406355, 30 MSER 43 (Putney-Yaceshyn, February 7, 2024) addressed one such situation, namely, whether a school district is required to evaluate a student for special education when one legal parent requests and consents to an initial evaluation but the other legal parent rejects it. Here, the student's mother had requested that Natick evaluate the student, which it did. After deeming the student ineligible for special education, the mother rejected that finding, requested further evaluation in an area apparently not initially assessed by the district, and provided her consent for the further evaluation. The student's father refused consent to the additional testing, initiating a hearing and requesting that Natick "cease and desist" from any further evaluation of the student. In response, Natick moved to dismiss the father's case, on the basis that 603 CMR 28.04(2) compels a school district to evaluate a student whenever it receives the consent of *a parent* to do so. The hearing officer agreed, reasoning that the statutes and regulations bearing on student evaluation use the singular term "parent" throughout—in contrast to other sections which contain the plural term "parents." Thus, the hearing officer concluded, in line with prior rulings on the issue, that Natick was mandated to complete the student's evaluation to which only the mother consented. At least within this context, disagreements among parents are family matters not subject to the BSEA's jurisdiction.

DISTRICT'S OBJECTION TO ACCELERATED STATUS OF THE PARENT'S HEARING REQUEST DENIED

Fitchburg Public Schools, 30 MSER 60, BSEA# 2409889 (Reichbach, March 26, 2024) provides a good example of the proper grounds for advancing a BSEA matter on an expedited basis. BSEA Hearing Rule II(D) provides that hearings may be assigned accelerated status in the following circumstances: "(a) When the health or safety of the student or others would be endangered by the delay; (b) When the special education services the student is currently receiving are sufficiently inadequate such that harm to the student is likely; or (c) When the student is currently without an available educational program or the student's program will be terminated or interrupted immediately." Where only some issues in a hearing request meet the criteria above, the matter may be bifurcated to allow the qualifying issues to proceed on an accelerated track, with the remaining issues proceeding along a typical track. Here, the guardian's hearing request was granted accelerated status and the district challenged that, asserting that the guardian had not pled sufficient facts to support the status.

The thirteen-year-old student in this matter has Cerebral Palsy, Cortical Visual Impairment, autism spectrum disorder, severe intellectual disability, seizure disorder, a communication disorder and central hypothyroidism. He wears pull-ups and is unable to use the bathroom without assistance or notify caretakers when he needs to use the bathroom. His leg braces are attached to his hips by cable wires. He could walk, often with assistance, but when overly fatigued, unsteady, or exhibiting unsafe behaviors he utilizes a wheelchair. The student began attending the in-district Longsjo Middle School on November 21, 2023. At issue was the safety of the student and the contention by the guardian that the

district repeatedly denied requests for increased safety measures related to the student's seizure disorder. In addition, the guardian claimed that the district failed to implement plans relating to the student's toileting, negatively affecting both his health and dignity. Specific incidents of these included: the student's pull-ups were not proactively checked or changed at all, potentially impacting his skin health; and arriving home with broken leg braces and red marks on his back, presumably from too much sitting despite his nutritionist's directive that he ambulate to assist his stooling patterns, appetite, weight gain, and bone health.

The hearing officer held that if the allegations in the hearing request were true, allowing the incidents to continue could very well endanger the student's health or safety, as well as his dignity. Because the hearing request sought a different placement, the entire hearing request remained on the accelerated track. ■

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