

# COMMONWEALTH OF MASSACHUSETTS

## Division of Administrative Law Appeals

### Bureau of Special Education Appeals

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In Re: XiLi<sup>1</sup>

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BSEA #1803736

The Gifford School

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### RULING ON SCHOOL'S MOTION TO DISMISS

This matter comes before the BSEA on the Motion of the Respondent private school, the Gifford School (“Gifford”) to Dismiss the Hearing Request filed by the Parent on October 24, 2017. Gifford asserts that the Parent’s Hearing Request is insufficient as it lacks a cognizable claim for relief and fails to state any factual allegations against Gifford that could implicate a violation of federal or state special education laws. Gifford further asserts the BSEA lacks subject matter jurisdiction over private special education schools in Massachusetts. The Parent is proceeding *pro se*. The School is represented by attorney Michael Joyce.

#### I. STANDARD FOR MOTIONS TO DISMISS

Under the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01(7) (g) (3) and Rule 17B of the BSEA Hearing Rules, a Hearing Officer may allow a motion to dismiss if the party requesting the appeal fails to state a claim on which relief can be granted.

Since this Rule is analogous to Rule 12(b) (6) of the Federal and Massachusetts Rules of Civil Procedure, BSEA hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim. Specifically, a hearing officer must consider as true all facts alleged by the Party opposing dismissal (in this case, Parent) and should not dismiss the case if those facts, if proven, would entitle the claimant to relief that the BSEA has authority to grant. *Ashcroft v. Iqbal*, 556 U.S.662 (2009), *Ocasio-Hernandez v. Fortunato-Burset*, 640 F.3<sup>rd</sup> 1 (1<sup>st</sup> cir. 2001).

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<sup>1</sup> “XiLi” is a pseudonym selected by the Hearing Officer to protect the privacy of the Student in documents available to the public.

## II. PROCEDURAL HISTORY

1. On October 24, 2017 the Parent filed a Hearing Request with the BSEA alleging, without elaboration, that between May 2016 and July 2017 Gifford engaged in

- a) denial of a free appropriate public education;
- b) discrimination against both the Student and the Parent on the basis of their disabilities;
- c) conspiracy to deny civil rights; and
- d) harassment of the disabled.

As relief for these alleged wrongs the Parent requested “exhaust administrative remedies.” The matter was set for Hearing on November 28, 2017.

2. On November 3, 2017 Gifford submitted a challenge to the sufficiency of the Hearing Request.

3. On November 7, 2017 the Hearing Officer ruled that the Parent’s original Hearing Request did not meet the statutory requirements set out at 20 U.S.C. 1415 (b)(7) and was therefore insufficient. The Order outlined the items that needed supplementation and/or clarification and permitted the Parent to file an Amended Request within 20 days.

4. On November 27, 2017 the Parent submitted an Amended Request for Hearing to the BSEA. The Request consisted of factual allegations spanning 2011-2017 against a variety of public agencies, boards, school districts, courts, and their employees individually. The allegations mirrored those previously submitted in three then active parental appeals before the BSEA: a.) *XiLi and Natick Public Schools and Framingham Public Schools*, BSEA #1707648; b.) *XiLi and the BSEA*, BSEA #1803601; and c.) *XiLi and DESE*, BSEA #1802999.

5. The only factual allegations/claims set out in the Amended Hearing Request that pertain to Gifford are:

- a) Gifford failed to implement the Student’s accepted IEP during the 2016-2017 school year;
- b) Gifford tolerated bullying toward the Student during the 2016-2017 school year;
- c) Gifford failed to cooperate with Ms. X during the 2016-2017 school year;
- d) Gifford failed to make appropriate environmental, instructional and scheduling accommodations for XiLi.

The Parent also claims, without factual support, that Gifford was “complicit” with DESE, BSEA, DCF, Natick and Framingham in disregarding Xili’s actual residency and in denying Xili and her Parent their substantive and procedural special education rights.

6. The Parent’s Amended Hearing Request states: “my request for relief is to exhaust all administrative remedies so that I can pursue monetary damages from Gifford for their intentional infliction of emotional distress on [Xili].”

### III. DISCUSSION

The jurisdiction of the BSEA is limited to deciding disputes among Parents/Students and publicly funded entities that provide, or are authorized to provide, special education and related services to individuals with disabilities under the age of 22. In particular, the BSEA’s federal subject matter jurisdiction is confined to determining the eligibility for, and the appropriate provision of, a free appropriate public education as contemplated by the IDEA, 20 U.S.C. §1400 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 *et seq.*<sup>2</sup> Where a party requesting a BSEA hearing does not assert a substantive or procedural violation of a special education statute, and/or does not request relief authorized under any of these statutes, the BSEA lacks jurisdiction. *Fry v. Napoleon Community Schools*, 137 S.Ct. 743 (2017). Furthermore, standard principles of civil procedure, designed to focus a due process proceeding on the proper parties, issues and outcome, offer additional limitations on the extent of claims that can be properly considered by the BSEA. For example, the IDEA’s two year statute of limitations serves to fix the attention of the Parties’ and the Hearing Officer on the current needs and status of the Student.<sup>3</sup> Estoppel doctrines prevent relitigation of facts and claims that have been previously decided by a court or in a specialized administrative due process proceeding.<sup>4</sup> Furthermore, the U.S. Supreme Court has clarified that not every disability-based claim requires presentation to the BSEA. For claims arising under federal law the BSEA may consider only those claims “rooted” in the IDEA which request a remedy for a violation of the IDEA/Section 504 that an administrative hearing officer is authorized to award.

After careful consideration of the alleged facts and claims presented by the Parent, treating them as true and viewing them in the light most favorable to continuing action at the BSEA, I find that the Parent has failed to state a claim on which the BSEA could grant any form of authorized relief. My reasoning follows:

a) The bulk of the Parent’s factual allegations are time-barred. Having properly filed this Request for Hearing on November 27, 2017 the BSEA may consider only those claims arising after November 27, 2015.

b) The Parent has previously presented her allegation that Gifford denied Xili a free appropriate public education between May 2016 and July 2017 to the BSEA. In BSEA #1707648, *Natick and Framingham*, Hearing Officer Berman found that the responsible public school districts offered, and Gifford fully implemented, an appropriate IEP for Xili throughout

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<sup>2</sup> See also: 603 CMR 28.03 (3).

<sup>3</sup> 29 U.S.C. §1415 (b)(6)(B); 34 CFR 300.507 (a)(2).

<sup>4</sup> *Almeida v. Travelers Ins. Co.*, 383 Mass. 226 (1981).

the relevant time period. Further, Hearing Officer Berman found no violation of any of the Student's or Parent's substantive or procedural special education rights during that time. *Natick and Framingham*, 23 MSER 199 (2017). The Parent now seeks to assert the same facts and the same claims for the same time period against the same party in interest/privy. Traditional doctrines of estoppel preclude BSEA consideration of those previously determined facts and claims. *Ellis v. Ford Motor Co.*, 628 F.Supp. 849 (D. Mass 1986).

c) There are no facts in the Parent's Hearing Request that could reasonably be linked to her claim that Gifford discriminated against her and the Student on the basis of their disabilities between November 2015 and November 2017. To the extent that any such facts might exist, and might implicate a claim under the IDEA and/or Section 504, I find that they have been presented to and resolved by the BSEA in *Natick and Framingham*, BSEA #1707648, 23 MSER 199 (2017). Again, traditional doctrines of estoppel bar relitigation at the BSEA. Any claims of disability-based discrimination made under statutes other than the IDEA and Section 504 are not within the BSEA's jurisdiction.

d) Similarly, parental claims of disability-based harassment and conspiracy to deny civil rights fall outside the BSEA's jurisdiction. No private right of action exists under the IDEA or Section 504 for "conspiracy" or for "harassment".<sup>5</sup> Furthermore the Parent's Hearing Request did not set out facts which could, even generously viewed, support those claims. To the extent that any such claims were raised, and pertinent facts determined, in BSEA #1707648, the Parent is estopped from relitigating them here.

e) The Parent's only request for relief is "to exhaust all administrative remedies." That she has done. Her ancillary request for an award of "monetary damages" is not in the BSEA's remedial arsenal.

Having determined that the claims set out in the Parent's Hearing Request, as well as the factual allegations reasonably linked to them, are either time-barred, or have been the subject of prior dispositive rulings, or do not implicate any right accorded to the Parent or Student under the IDEA and Section 504, I find that the Parent has failed to state a cognizable claim within the BSEA's jurisdiction.<sup>6</sup> Furthermore, the Parent does not request any relief the BSEA is authorized to award. In sum, the Parent's Hearing Request against Gifford fails to identify any claim on which the BSEA could grant relief. 801 CMR 1.01 (7)(g)(3)<sup>7</sup>

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<sup>5</sup> *Fry, supra.*

<sup>6</sup> I decline to dismiss this action on the basis of lack of jurisdiction over private special education schools as urged by Gifford. See: 603 CMR 28.10 (3).

<sup>7</sup> For a comprehensive understanding of these inter-related proceedings please also see: *Natick and Framingham*, 23 MSER 199 (2017); *Student and BSEA*, BSEA #1803601, November 3, 2017, *XiLi and DESE*, BSEA #1802999, January 30, 2018.

ORDER

The Motion of the Gifford School to Dismiss for Failure to State a Claim Upon Which Relief can be Granted is GRANTED.

This matter is hereby DISMISSED.

By the Hearing Officer

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Lindsay Byrne  
Dated: February 8, 2018