

# COMMONWEALTH OF MASSACHUSETTS

## Division of Administrative Law Appeals

### Bureau of Special Education Appeals

In re: Jay<sup>1</sup>

BSEA #: 1800619

#### **RULINGS ON MOTIONS TO DISMISS ALL OR PARTS OF THIS BSEA APPEAL**

This Ruling is rendered pursuant to M.G.L. Chapters 30A and 71B; 20 U.S.C. §1400 et seq.; 29 U.S.C. §794 et seq.; and the regulations promulgated under these statutes.

#### **BACKGROUND**

Parent brings this appeal on behalf of her son against the Holyoke Public Schools (Holyoke) and the Massachusetts Department of Elementary and Secondary Education (MDESE). Parent alleges Holyoke has failed to provide an Individualized Education Program (IEP) that can provide Jay with a Free and Appropriate Public Education (FAPE). Parent alleges numerous procedural and substantive violations of law under a number of state and federal statutes, particularly around the issue of Holyoke's alleged failure to translate Jay's records into Spanish, conduct evaluations in Spanish, provide all notices in Spanish and include a qualified Spanish interpreter at all meetings involving Jay and Mother. Parent/Jay seek relief not only on behalf of Jay but of all similarly situated students in Holyoke and the Commonwealth of Massachusetts, thereby adding MDESE as a Respondent to this appeal.

MDESE has filed a Motion to Dismiss this Appeal against MDESE for lack of subject matter jurisdiction. Holyoke has filed a Motion to Dismiss: 1) Parent's Claims Unrelated to FAPE; 2) Parent's Request for Class Certification and Systemic Relief; and 3) Parent's Request for Monetary Damages. Parent has filed Oppositions to Holyoke's and MDESE's Motions to Dismiss.

#### **STATEMENT OF POSITIONS**

Parent's position is that Holyoke has failed to implement and/or provide IEPs which provide FAPE to Jay since his enrollment in Holyoke in December 2015; has failed to implement his IEP from Puerto Rico; and has failed to provide IEPs and requested evaluations in a timely manner. Parent alleges numerous illegal suspensions of Jay either without any manifestation determination at all or with defective manifestation determinations based upon incorrect facts and/or with such decisions/determinations being written in English with no Spanish translation or no Spanish interpreter being present. Parent alleges that Jay has regressed several grades in Holyoke since his last testing in Puerto Rico.

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<sup>1</sup>Jay is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in publicly available documents.

In addition to claims under state and federal special education law, Parent/Jay seek declarations and injunctive relief as well as monetary damages for violations of M.G.L.c. 71, s. 37H<sup>3</sup>/<sub>4</sub>; M.G.L.c.76 s.16; the Americans with Disabilities Act, 42 U.S.C. § 12101 (ADA); the Every Student Succeeds Act, 20 U.S.C. § 6312 (ESSA); Title VI of the Civil Rights Act of 1965, 42 U.S.C. § 200d-200d7; the Equal Education Opportunity Act of 1974, 20 U.S.C. § 1701-1721 (EEOA); 42 U.S.C. § 1983 for violation of rights to due process and equal protection protected by the Fourteenth Amendment of the United States Constitution; and the Massachusetts Declaration of Rights.

Holyoke's position is that the BSEA should dismiss Parent's claims unrelated to FAPE because such claims are beyond the scope of the BSEA's jurisdiction and do not require administrative exhaustion. Holyoke contends that the BSEA should dismiss Parent's request for class certification and systemic relief because this claim was not sufficiently pled and falls outside of the BSEA's authority and expertise. Finally, Holyoke contends that the BSEA should dismiss Parent's request for monetary damages because the BSEA does not have the authority to award monetary damages.

MDESE's position is that the BSEA lacks jurisdiction to decide the issues raised against MDESE in Parent's hearing request. Parent and Jay seek relief not only on Jay's behalf but "on behalf of all similarly situated students in the Holyoke Public Schools and in the Commonwealth of Massachusetts." Parent and Jay state in their hearing request that they added MDESE as a respondent for that purpose. MDESE contends that the BSEA has no jurisdiction to certify a class of plaintiffs nor does it have the authority to grant class action relief. Accordingly MDESE should be dismissed as a party to this appeal.

## **RULING**

Holyoke's three partial Motions to Dismiss (MTD) and MDESE's MTD are GRANTED.

My analysis follows:

In their requests for relief Parent/Jay request that the BSEA:

Certify a class of all students in the Holyoke School District with parents or guardians who are Limited English Proficient and eligible or potentially eligible for Special Education Services; and,

Certify a class of all students in the Commonwealth with parents or guardians who are Limited English Proficient and eligible or potentially eligible for Special Education Services.<sup>2</sup>

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<sup>2</sup>It is noted that in her hearing request, Parent has not plead any specific factual allegations against either Holyoke or MDESE to support her claims for class action status other than "upon information and belief the District treats similarly-situated students... in the same manner." All of the alleged facts provided within Parent's hearing request relate specifically and solely to Jay.

Parents also seek relief and monetary damages under a number of state and federal statutes, delineated under Parent's Position above, which go far beyond state and federal special education statutes and regulations.

The BSEA is not a court of general jurisdiction. The Bureau of Special Education Appeals is an administrative agency whose governing statute is M.G.L.c. 71B s. 2A(a) which provides, in relevant part:

There shall be a bureau of special education appeals which shall provide adjudicatory hearings ...for resolution of disputes between and among parents, school districts, private schools and state agencies concerning: (i) any matter relating to the identification, evaluation, education program or educational placement of a child with a disability or the provision of a free and appropriate public education to the child arising under this chapter and regulations promulgated hereunder or under the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq., and its regulation; or (ii) a student's rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, and its regulations. (Emphasis added)

Throughout M.G.L. c.71 B, 20 U.S.C Section 1400 et seq., 29 U.S.C. U.S.C.Section 794 and the regulations promulgated pursuant to these statutes, the repeated references are to *a child* with a disability, *the child*, *the student*, all in the singular, individual form. The BSEA's jurisdiction is, therefore, limited to resolving disputes and providing relief for individual students. Further, the BSEA *Hearing Rules for Special Education Appeals*, make no provision for class actions.

Given the above statutory and regulatory scheme, the charge of the BSEA Hearing Officer is to determine the individual student's specific special education needs, and to determine whether or not the school district can appropriately address those individual needs. Unlike the federal courts (see Rule 23 of the Federal Rules of Civil Procedure), the BSEA has no statute, regulation, or rule providing for class action claims. The BSEA has never engaged in class-wide fact finding and does not have the experience, expertise, or institutional capacity to provide administrative fact finding on class action claims which could be of assistance to the federal court in any potential, subsequent class action litigation.

As specified above, the jurisdiction and authority of the BSEA is limited to M.G.L.c. 71B, the Massachusetts special education statute; 20 U.S.C. § 1400 et. seq., the federal special education statute; 29 U.S.C. § 794, Section 504 of the Rehabilitation Act of 1973; and the regulations promulgated pursuant to these statutes. Neither the Massachusetts Legislature nor Congress has conferred upon the BSEA jurisdiction to hear any actions brought under the numerous federal and state non-special education statutes asserted in Parent's position above, and the BSEA has no authority to award monetary damages. See *Nieves-Marquez v. Puerto Rico* 353 F. 3d 108 (1<sup>st</sup> Cir. 2003); *Frazier* 276 F.3d at 69-70; *In re: CBDE Public Schools BSEA #10-6854* (2011).

Therefore, Parent has satisfied any potential administrative exhaustion requirement pursuant to Frazier v. Fairhaven School Committee 276 F. 3d 52 (1<sup>st</sup> Cir 2002) regarding such non-special education claims.

Parent's hearing request has alleged numerous special education violations against Holyoke which, if proven, would permit significant relief from the BSEA. Therefore this case shall proceed to a BSEA hearing on said issues and a decision shall be rendered pursuant to the BSEA's designated jurisdiction and authority.

## **ORDER**

I. Holyoke's MTD Parent's Claims Unrelated to FAPE is GRANTED.

II. Holyoke's MTD Parent's Request to Class Certification and Systemic Relief is GRANTED.

III. Holyoke's MTD Parent's Request for Monetary Damages is GRANTED.

IV. MDESE's MTD Parent's Class Action Claim Against MDESE is GRANTED. MDESE is Dismissed as a Party to this Appeal.

By the Hearing Officer,

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Raymond Oliver

Dated: February 13, 2018