

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

In re: Adam¹

BSEA #1708888

**RULING ON SCHOOL DISTRICT'S MOTION TO RECONSIDER ITS MOTION TO
DISMISS PARENT'S AMENDED HEARING REQUEST OR, IN THE ALTERNATIVE,
DISMISS CERTAIN CLAIMS AS BEYOND THE STATUTE OF LIMITATIONS**

This matter comes before the Hearing Officer on Taunton Public Schools' *Motion to Reconsider* the previous ruling on the District's Motion to Dismiss, or Otherwise Limit, Parent's² *Amended Hearing Request*, issued December 5, 2017.³

For the reasons set forth below, the District's Motion is ALLOWED IN PART and DENIED IN PART.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The procedural history of this matter is complex. As I reviewed it in detail in my *Ruling on School District's Motion to Dismiss Parent's Amended Hearing Request or, in the Alternative, Dismiss Certain Claims as Beyond the Statute of Limitations* [hereinafter "December Ruling"], I will not repeat it here except as necessary to give context to the present motion.

A. *Procedural History through January 21, 2018*

Following an expedited hearing and decision regarding school discipline issues, which took place in May 2017, Parent filed an *Amended Hearing Request* on September 26, 2017 fleshing out allegations that had not been addressed during the expedited hearing.⁴ Following a

¹"Adam" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

²Where documents were submitted on behalf of, and signed by, both Parent and Adam's grandmother, his former co-guardian, this Ruling refers to them as "Parent." Both the original *Hearing Request* and the *Amended Hearing Request* were filed by Parent of Adam and his former guardian.

³The District has also requested reconsideration of an Order issued May 1, 2017 denying Taunton's *Motion for Partial Dismissal* of the original *Hearing Request*. The original *Hearing Request* was signed by Adam's mother only. The basis of the District's *Motion for Partial Dismissal with Prejudice* was standing; Taunton argued that because Adam's mother did not have custody of Adam between September 2014 and February 27, 2017, when many of the events that were the subject of the *Hearing Request* were alleged to have occurred, she could not maintain the *Hearing Request*. Following a Conference Call on this issue, Parent refiled her *Hearing Request* under both her signature and that of Adam's grandmother, who shared custody with Adam's uncle, during this time period. The District's *Motion* was denied by Order dated May 1, 2017. It is this denial that the District now appeals. As the original *Hearing Request* has been superseded by the *Amended Hearing Request* filed September 26, 2017, which was also signed by Adam's mother and his grandmother, this request for reconsideration is moot.

⁴From May to September 2017 and beyond, the parties convened multiple times to address, among other things, the issues remaining for hearing.

Pre-Hearing Conference, on October 2, 2017 I issued an Order outlining the issues remaining for the hearing. On October 6, 2017, Taunton Public Schools (“Taunton” or “the District”) filed a Request for Dismissal of the *Amended Hearing Request* in Whole, and Dismissal and/or Limitation of Particular Claims. Although parent, *pro se*, did not file a written response to the District’s Motion, she offered arguments during the Pre-Hearing Conference that took place November 2, 2017. On December 5, 2017, the undersigned Hearing Officer issued a Ruling denying in part and allowing in part the District’s Motion, and clarifying the statute of limitations as it applied to Parent’s various claims. Specifically, according to the December Ruling, the following issues remained for hearing:

(A) Whether Taunton discriminated against [Adam] in violation of § 504 of the Rehabilitation Act of 1973, through

1. a pattern of suspensions without manifestation determination meetings between April 19, 2015 and April 19, 2017, inclusive of beginning and end dates;
2. changes in [Adam]’s classes (removal from Junior ROTC, change from general education computer course to special education course), without parental consent between September 26, 2015 and September 26, 2017, inclusive of beginning and end dates;
3. involvement of other systems (i.e. the Department of Children and Families; the courts/police (filing charges, No Trespass Order)) between September 26, 2014 and September 26, 2017, inclusive of beginning and end dates;
4. comments made by staff members between September 26, 2014 and September 26, 2017, inclusive of beginning and end dates; and/or
5. punishments disproportionately severe for offenses between September 26, 2014 and September 26, 2017, inclusive of beginning and end dates

(B) Whether Taunton violated the Individuals with Disabilities Education Act, by

1. failing to implement accepted, expired Individualized Education Programs through
 - a. failure to conduct manifestation determination meetings when required between April 19, 2015 and April 19, 2017, inclusive of beginning and end dates;
 - b. alteration of IEPs without the consent of his parent/guardian (i.e. Junior ROTC, computer classes) between September 26, 2015 and September 26, 2017, inclusive of beginning and end dates; and/or
 - c. failure to provide required accommodations between April 19, 2015 and April 19, 2017, inclusive of beginning and end dates; and/or
2. changing [Adam]’s placement one or more times without the consent of his parent/guardian by suspending him beyond ten days in a given school year at any time between April 19, 2015 and his suspension on March 10, 2016.

(C) If the answer to (A) or (B) is yes, what is the appropriate remedy?

On December 7, 2017, Parent requested postponement of the hearing scheduled to begin December 19, 2017 because of a family health emergency that required Adam’s grandmother, who had joint custody of Adam during a time relevant to this hearing and had signed the *Amended Hearing Request* along with Parent, to be out of state. On December 8, 2018, the District assented to the postponement and requested that December 19, 2017 be converted to a

Pre-Hearing Conference to clarify the positions of Adam's grandmother and uncle [hereinafter, together, "former co-guardians"] as to Parent's claims. Taunton asserted that a discussion with Adam's grandmother and uncle, whom the parties agreed had joint custody of Adam during all times relevant to Parent's *Hearing Request* until custody was returned to Parent on or about February 27, 2017, suggested that the former co-guardians did not agree with Parent's allegations and planned to withdraw so much of the *Hearing Request* as related to the period of time in which they had custody of Adam. On December 18, 2017, Adam's uncle filed a written request to postpone the Pre-Hearing Conference to the week of January 29, 2018. On December 18, 2017, the undersigned Hearing Officer granted the parties' requests and, following discussions of potential dates, scheduled a Pre-Hearing Conference [hereinafter "PHC"] for January 31, 2018.

B. January 31, 2018 Pre-Hearing Conference

Parent, Adam, Adam's former co-guardians, Counsel for the District, and the District's Director of Special Education Coordinator attended a Pre-Hearing Conference at Taunton High School on January 31, 2018. The parties discussed in detail the allegations of the *Amended Hearing Request*, as limited by the December Ruling. Adam's co-guardians stated that they did not believe the District had discriminated against Adam on the basis of his disability by involving other systems (i.e. the Department of Children and Families, the courts, or police), or by administering punishments disproportionately severe for his offenses between September 26, 2014 and February 27, 2017, the relevant time period that he was in their custody. One co-guardian believed that staff members had not made discriminatory comments to or about Adam; the other was unsure. The co-guardians stated that they did not recall ever having been asked to attend a manifestation determination meeting for Adam, nor did they recall asking for one before Adam's mother did so. They did not remember being asked for permission to remove Adam from the ROTC program or change his computer class. They stated that they believed Adam had received the accommodations to which he was entitled while in their custody.

I note that during the PHC, Adam displayed considerable difficulty complying with behavioral expectations. His frequent outbursts included personal criticisms of the District's Director of Special Education, District's Counsel, and the Hearing Officer. After being warned several times, he was removed from the PHC; his mother followed him out, and the PHC continued. According to the District's *Motion for Reconsideration*, Adam engaged in inappropriate behavior in the course of walking out of the building on that day.

C. Factual Background and Procedural History Post-January 31, 2018 PHC

On February 2, 2018, Taunton filed the present *Motion for Reconsideration and Request for Issuance of Decorum Order*, asserting that to the extent the *Amended Hearing Request* contained claims not supported by the individuals who had the authority to make educational decisions for Adam at the time they accrued, those claims must be dismissed. Specifically the District argued that based on the information provided by and the positions of Adam's former co-guardians at the PHC, the following issues, as identified in the December Ruling, required dismissal and/or modification for the reasons listed:

- Issue A(3) – dismissal (based on position of co-guardians);
- Issue A(4) – partial dismissal for any period of time prior to February 27, 2017 (based on position of co-guardians);
- Issue A(5) – dismissal (lack of jurisdiction during co-guardianship, and mootness for period following);
- Issue B(1)(c) – dismissal (for same reasons as A(5))

Following a Conference Call on February 6, 2018, the undersigned Hearing Officer issued an Order directing Parent to file any opposition to the District’s *Motion to Reconsider* by close of business on February 16, 2018 and scheduling the hearing for April 3 and 11, 2018.

On February 16, 2018, Parent filed a *Motion for Additional Time to Submit Her Opposition*, requesting through the close of business on February 19, 2018. Later the same day, Parent also filed her *Opposition*, signed only by her. On February 21, 2018, Parent filed the same *Opposition*, this time signed by Adam and by Adam’s grandmother, his former co-guardian, as well as by herself. In her *Opposition*, Parent reiterated her previous arguments, asserting that Taunton had misrepresented its “legal right to decide to change placement from his accepted IEP without approval from [Adam]’s guardian,” through “a pattern of excessive out of school suspension, being asked to leave [Taunton High School], and being removed from the ROTC then suspended indefinitely.” She focused much of her argument on Taunton’s suspension of Adam in March 2016 without a manifestation determination, and its refusal to allow him to return to Taunton High School. As I have explained several times in person and in rulings and orders on this matter, the District’s failure to hold a manifestation determination meeting in conjunction with that suspension, and the denial of a Free Appropriate Public Education (FAPE) that flowed from that failure, were addressed in the decision issued May 18, 2017 following an expedited hearing on the matter. As such, these allegations are moot.

In her *Opposition*, Parent described specific statements made by school officials in her presence that she characterized as derogatory discrimination on the basis of Adam’s disability and its manifestations. She also quoted an email from a school official to a Department of Children and Families (DCF) social worker regarding the filing of a Care and Protection petition in light of Adam’s refusal to participate in the program Taunton had proposed for him, and cited to a Trespass Notice given to Adam when he appeared at school for a manifestation determination meeting in March 2017.

Parent further argued that Taunton had misled Adam’s guardians by “[g]iving them incorrect procedural information, chang[ing his] placement without consent, convincing [them] that Taunton High School is not an option for [Adam, and] creating the misconception that the district had the right to change [Adam]’s placement.” Parent asserted that these actions constituted “specific representation” on the part of Taunton that it had “resolved a particular problem,” and fraudulently deprived Adam’s guardians of decision-making rights, such that the statute of limitations should not apply to limit her claims.

On February 21, 2018, Taunton filed a document objecting to Parent’s filing of documents after February 19, 2018. In its filing, Taunton objected “to anything being set forth in

the final written Pre-Hearing Order that differs from the discussion of the parties at the January 31, 2018 Pre-Hearing Conference.”

On February 26, 2018, on the basis of Adam’s behavior during and after the most recent proceedings in this matter, notably the January 31, 2018 PHC, the undersigned Hearing Officer allowed the District’s motion insofar as it requested direction regarding Adam’s behavior and a break/leave and staff support protocol for future proceedings. Also on that date, I allowed Parent’s *Motion for Additional Time*, but indicated that I would consider only those arguments responsive to the District’s *Motion for Reconsideration*.

On March 5, 2018, Parent filed a response to the District’s filing of February 21, 2018. In her response, she explained that the arguments in her *Opposition* were meant to clarify the former co-guardians’ position and demonstrate that Taunton had “fraudulently misled [them] and as a result the parties qualify for an exception of the statute of limitations.” With her response, she included documents and statements regarding an incident that had taken place in February 2018, arguing that they demonstrated further disability-based discrimination by Taunton against Adam. As Parent has not amended her *Hearing Request* since September 2017, I will not consider this incident in my decision on the matter.

A Hearing Officer-initiated Conference Call was held March 12, 2018 to discuss the issue of delegated and/or shared educational decision-making as well as logistics of the hearing. Both of Adam’s former co-guardians participated in the call, as did Parent, Counsel for the District, and the District’s Director of Special Education. During the call, Adam’s former co-guardians took positions that were at times inconsistent with those they took at the PHC.⁵

DISCUSSION

The District’s *Motion for Reconsideration* focuses on four distinct issues within Parent’s claims. I examine them each in turn, prefacing the discussion with a note on standing.

A. Standing of the Parties

Adam turned eighteen (18) recently. The Individuals with Disabilities Education Act (IDEA) provides that a state “may provide that, when a child with a disability reaches the age of majority . . . all other rights [other than the right to notice] accorded to parents under this subchapter transfer to the child.”⁶ Consistent with the IDEA, under Massachusetts special education regulations, for purposes of special educational decision-making the parent’s legal authority “shall transfer to the student when the student reaches 18 years of age.”⁷ It is a school

⁵ Shortly after the Conference Call on March 12, 2018, Parent filed a letter signed by herself and Adam’s grandmother, reinforcing and expanding on the position taken by Adam’s grandmother during the Conference Call and refuting some of the statements made by the co-guardians during the PHC.

⁶ 20 USC § 1415(m)(1)(B); see 34 CFR §300.520 (federal regulations implementing this part of the Individuals with Disabilities Education Act (IDEA)).

⁷ 603 CMR 28.02(15).

district's obligation to obtain consent from an eighteen year-old student to continue providing special education services.⁸ In the alternative, an eighteen year-old student may choose to share decision-making with, or delegate decision-making to, his parent.⁹

In the instant matter, Adam has not signed his own IEP, nor has he signed documents indicating his intent to share educational decision-making with his mother or delegate decision-making to her, though he has maintained at Pre-Hearing Conferences that this is his intent. Unless the parties are able to obtain documentation of shared or delegated decision-making at least one day before exhibits and witness lists are due, further proceedings will be stayed for this purpose.

B. Issue A(3): Whether Taunton discriminated against Adam in violation of § 504 of the Rehabilitation Act of 1973 ("Section 504") through involvement of other systems between September 26, 2014 and September 26, 2017, inclusive of beginning and end dates.

Through this claim, Parent's *Amended Hearing Request* asserts that the District referred Adam to DCF and filed criminal charges and/or a "No Trespass" Order against Adam on the basis of his disability. During the PHC on January 31, 2018, Adam's former co-guardians indicated that they did not support this allegation. On March 12, 2018, however, Adam's grandmother indicated that she believed that Taunton's involvement of other agencies, particularly the court system, may have constituted disability-based discrimination. Given the conflicting positions of the co-guardians, I cannot dismiss or otherwise limit this claim, and it survives in full. The District may probe the co-guardians' beliefs on this issue at hearing.

C. Issue A(4): Whether Taunton discriminated against Adam in violation of § 504 through comments made by staff members between September 26, 2014 and September 26, 2017, inclusive of beginning and end dates.

Through this claim, Parent's *Amended Hearing Request* focuses on comments allegedly made by one particular school official. At least one of Adam's former co-guardians witnessed at least one of the exchanges between Parent and this school official and as such, supports this claim. It survives Taunton's *Motion to Reconsider* in full.

⁸ "When the student reaches 18 years of age, he or she shall have the right to make all decisions in relation to special education programs and services. The school district shall have the obligation to obtain consent from the student to continue the student's special education program. The parents will continue to receive written notices . . . but will no longer have decision-making authority," except in delineated circumstances described in note 9, *supra*. 603 CMR 28.07(5).

⁹ A student who turns eighteen "may choose to share decision-making with his or her parent (or other willing adult), including allowing the parent to co-sign the IEP," or "may choose to delegate continued decision-making to his or her parent, or other willing adult." In either case, the Team (for shared decision-making) or at least one representative of the school district and one witness (for delegated decision-making) must be present at the time of the choice, which must be documented in written form. See 603 CMR 28.07(5).

D. Issue A(5): Whether Taunton discriminated against Adam in violation of § 504 through punishments disproportionately severe for offenses between September 26, 2014 and September 26, 2017, inclusive of beginning and end dates.

At the PHC, Adam's former co-guardians stated that they believed the punishments Adam received from Taunton were not disproportionately severe, given his offenses. During the Conference Call that took place March 12, 2018, Parent indicated that Adam's grandmother had not understood the question at the PHC, and his grandmother asserted that she believed some of his punishments, notably his out of school suspensions, had been unfair and more severe as a result of his disability. Given the conflicting positions of the co-guardians, I cannot dismiss or otherwise limit this claim, and it survives in full. The District may probe the co-guardians' beliefs on this issue at hearing.

E. Issue (B)(1)(c): Whether Taunton violated the Individuals with Disabilities Education Act, through failure to provide accommodations between April 19, 2015 and April 19, 2017, inclusive of beginning and end dates.

At the PHC, Adam's former co-guardians explained that they believed Taunton had, in fact, provided Adam with the accommodations to which he was entitled as a result of his disability. They gave specific examples of ways in which the school had worked with him. Because the former co-guardians do not support this claim, insofar as it involves the time period during which Adam was in their custody, it is dismissed. To the extent it survives, it is for the time period between February 27 and April 19, 2017.

F. Statute of Limitations

As described above, in her *Opposition*, Parent asserted that she should be permitted to pursue claims beyond the IDEA's two-year statute of limitations. As explained in my December Order, the IDEA contains an exception to the statute of limitations that applies "if a parent was prevented from requesting the hearing due to (i) specific misrepresentations by the local educational agency that it had resolved the particular problem forming the basis of the complaint; or (ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent."¹⁰ Parent alleged, and continues to argue, that the District perpetuated fraud on, or at least misled, Adam's former co-guardians by telling them that Taunton High School was not an option for Adam following his suspension in March 2016. Although Adam was entitled to return to school under the circumstances, as I concluded in my decision following the expedited hearing, the communication described by Parent certainly did not suggest that the District had "resolved the particular problem" – that of a disagreement about Adam's placement, where Adam wanted to return to Taunton High School but the District maintained that he could not do so. Notwithstanding the fact that Adam's former co-guardians were not aware that Adam had the right to return to school, the District's communication that he would not be permitted to return, if anything, should have highlighted that the problem was not resolved. Parent has not, therefore, met her burden to demonstrate that she was prevented from requesting the hearing due to specific misrepresentations by Taunton that it had resolved "the

¹⁰ 20 U.S.C. § 1415(f)(3).

particular problem forming the basis of the complaint.” No exception to the statute of limitations applies.

CONCLUSION

The issues remaining for hearing are as follows:

- A. Whether Taunton discriminated against [Adam] in violation of § 504 of the Rehabilitation Act of 1973, through
 1. a pattern of suspensions without manifestation determination meetings between April 19, 2015 and April 19, 2017, inclusive of beginning and end dates;
 2. changes in [Adam]’s classes (removal from Junior ROTC, change from general education computer course to special education course), without parental consent between September 26, 2015 and September 26, 2017, inclusive of beginning and end dates;¹¹
 3. involvement of other systems (i.e. the Department of Children and Families; the courts/police (filing charges, No Trespass Order)) between September 26, 2014 and September 26, 2017, inclusive of beginning and end dates;
 4. comments made by staff members between September 26, 2014 and September 26, 2017, inclusive of beginning and end dates; and/or
 5. punishments disproportionately severe for offenses between September 26, 2014 and September 26, 2017, inclusive of beginning and end dates

- B. Whether Taunton violated the Individuals with Disabilities Education Act, by
 1. failing to implement accepted, expired Individualized Education Programs through
 - a. failure to conduct manifestation determination meetings when required between April 19, 2015 and April 19, 2017, inclusive of beginning and end dates;
 - b. alteration of IEPs without the consent of his parent/guardian (i.e. Junior ROTC, computer classes) between September 26, 2015 and September 26, 2017, inclusive of beginning and end dates; and/or
 - c. failure to provide required accommodations between February 27, 2017 and April 19, 2017, inclusive of beginning and end dates; and/or
 2. changing [Adam]’s placement one or more times without the consent of his parent/guardian by suspending him beyond ten days in a given school year at any time between April 19, 2015 and his suspension on March 10, 2016.

- C. If the answer to (A) or (B) is yes, what is the appropriate remedy?

ORDER

¹¹The District requested clarification of this claim at the Pre-Hearing Conference on January 31, 2018. It is multi-faceted. For Parent to prevail, she must prove that ROTC and/or computer classes were part of the IEP process for Adam such that changing them required parental consent, and that changes were made absent consent during the timeframe delineated.

The District's *Motion to Reconsider* is hereby ALLOWED IN PART and DENIED IN PART. The hearing will be limited to the issues described in the Conclusion, above.

The District is directed to cooperate with Parent in obtaining documentation of Adam's decision to either delegate educational decision-making to Parent, or share it with her. In the event that this occurs in advance of March 26, 2018, the Hearing will take place at Friedman Middle School in Taunton on April 3 and 11, 2017.

Witness lists and exhibits are due by close of business on March 27, 2018.

In the event that the parties are unable to obtain the documentation described above, a Hearing Officer-initiated Conference Call will take place at 11:00 AM on April 3, 2018 for the purpose of setting new hearing dates.

By the Hearing Officer:

Amy M. Reichbach
Dated: March 12, 2018