

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

IN RE MOLLY¹

&

BSEA #1905404

PEABODY PUBLIC SCHOOLS

RULING ON PEABODY PUBLIC SCHOOL'S MOTION TO DISMISS

This matter comes before the Bureau of Special Education Appeals on the Motion of the Respondent School District, Peabody, to Dismiss the Hearing Request filed by the *pro se* Parent on November 26, 2018. Peabody asserts that the Parent has failed to state a claim on which the BSEA could grant relief.

I. LEGAL FRAMEWORK

A Motion to Dismiss may be granted if the party requesting the hearing fails to state a claim for which relief is available through the BSEA. 801 CMR 1.01 (7)(g)(3); BSEA Hearing Rules XVII (4). See also: F.R.C.P. Rule 12 (b)(6) and M.R.C.P. Rule 12 (b)(6). Dismissal on pleadings is disfavored. This is particularly true when assessing the sufficiency of claims that may be inartfully or unconventionally presented by *pro se* litigants. In considering whether dismissal is warranted a Hearing Officer must accept all factual allegations set forth in the petitioner's hearing request as true. Similarly, the Hearing Officer must resolve all factual inferences and/or inconsistencies, as well as the veracity or provability of a factual claim, in favor of the non-moving party. If those facts, proved at a hearing, would entitle the non-moving party to any form of relief from the BSEA, then dismissal for failure to state a claim is not appropriate. *Ashcroft v Iqbal*, 556 U.S. 662 (2009); *Ocasio-Hernandez v. Fortunato-Burset*, 640 F.3d. 1 (1st Cir. 2011); *Doe v. Attleboro*, 2011 U.S. Dist. LEXIS 98235 (Mass. 2011) (not in official reporter).

II. PROCEDURAL BACKGROUND²

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

²All "facts" are taken from the Parties' submissions and are subject to proof at Hearing.

1. Molly is a third grade student attending the Peabody Public Schools through the School Choice Program. M.G.L.c. 76 §12B.
2. Molly was deemed eligible for special education services in October 2017 due to ADHD and Depression. The Parent accepted a 2017-2018 full inclusion IEP that did not include transportation services.
3. The Team reconvened on September 25, 2018 to develop a new IEP. The Parent requested that transportation services be included on the 2018-2019 IEP. The Team declined the Parent's request.

Subsequently the Parent wrote several letters to the Peabody special education department offering support for her request for transportation services for Molly. She argued that Molly required the social and peer environment regular transportation would offer in order to address the social-emotional goals set out in her IEP. The Parent asserted that Molly's special needs could be met by permitting her to ride on an established Peabody Public Schools bus route. The Parent did not request any specialized transportation services.

4. Peabody proposed a 2018-2019 IEP that did not include transportation. The Parent accepted the placement but partially rejected the program due to lack of transportation.
5. On November 26, 2018 the Parent filed a Hearing Request challenging Peabody's refusal of her request to allow Molly to access regular transportation services as an accommodation to her disability and a related service in her IEP.
6. On January 8, 2009 Peabody filed a Motion to Dismiss the Parent's Hearing Request asserting that the Commonwealth's School Choice Program places responsibility for any necessary transportation with the student's family. Furthermore, Peabody claims, there is no evaluative support for finding that Molly is entitled to disability-related transportation.

CONCLUSION

After careful consideration of Parent's submissions, treating the facts asserted therein as true, viewing them in the light most favorable to continuing action at the BSEA, and with the additional flexibility and nuance necessarily accorded to the statutory and regulatory claims raised by a *pro se* litigant, it is my determination that the Parent has adequately asserted viable claims under the IDEA and MGL c. 71B. of which the BSEA has jurisdiction.

The Parent has requested that the BSEA find that the 2018-2019 IEP developed by Peabody does not offer Molly a free appropriate public education because it fails to provide transportation either as an integral part of a comprehensive special education program designed to remediate Molly's social/emotional deficits, or as access to a mainstream environment which provides peer models and opportunities to practice and generalize the skills targeted by the accepted portions of the IEP. Either of these statements, along with the supporting factual skeleton, implicates BSEA jurisdiction.

It is sufficient to defeat the Motion to Dismiss at this point in the special education appeals process for the Parent to have articulated cognizable claims under the IDEA, Section 504, and/or MGLc. 71B. That she has done. Therefore, this matter should proceed to Hearing.

ORDER

The School's Motion to Dismiss is DENIED.

By the Hearing Officer

Lindsay Byrne
Dated: January 31, 2019