

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

In re: Ollie¹

BSEA #2004776

RULING ON SPRINGFIELD PUBLIC SCHOOLS' PARTIAL MOTION TO DISMISS

This matter comes before the Hearing Officer on the Motion of the Springfield Public Schools (Springfield or “the District”) to Partially Dismiss the Hearing Request filed by Parent on behalf of Ollie. Springfield filed its *Partial Motion to Dismiss*, accompanied by a Memorandum of Law in support thereof, on February 3, 2020. Parent did not file a response. Neither party requested a hearing on the Motion, and as testimony or oral argument would not advance the Hearing Officer’s understanding of the issues involved, this Ruling is being issued without a hearing pursuant to Bureau of Special Education Appeals *Hearing Rule VII(D)*. For the reasons set forth below, Springfield’s *Partial Motion to Dismiss* is hereby ALLOWED IN PART and DENIED IN PART.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On December 30, 2019, Parent filed a *Hearing Request* against Springfield alleging that her son, Ollie, had not received any educational services since April 2019. According to Parent, the relationship between the family and the District has deteriorated due to the misconduct of Springfield officials to the point that Ollie, who has been diagnosed with autism, ADHD, sensory processing disorder, a language disability, and an intellectual impairment, is now afraid to participate in his own Individualized Education Program (IEP) meetings. She contends, further, that her attempts to have the Superintendent investigate this misconduct has resulted in retaliation against her and her son by both Springfield Public Schools and the Mayor’s office. Specifically, Parent argues that Ollie has been denied a free appropriate public education (FAPE) since April 2017 due to Springfield’s failure to provide him with a highly qualified reading coach and appropriate reading intervention; failure to create and deliver appropriate transition services; and failure to provide travel training. She requests that the BSEA order Springfield to include in Ollie’s IEP direct instruction in self-advocacy skills, continued speech and language therapy, and 1:1 tutoring by an Orton-Gillingham trained teacher; hire an independent transitional coach for Ollie and rewrite his transition goal; and provide compensatory services, including services until Ollie’s twenty-fourth birthday. Furthermore, Parent requests that the BSEA find that Springfield has retaliated against parent and student for participating in protected activities; “find change of placement was denial of parent rights, and violation of IEP placement process;” and find that Springfield “violated student/parental rights by bringing an attorney to IEP with no notice.” Finally, Parent requests that the BSEA order Springfield to “write a policy for misconduct by top administration” and pay for “two addition (*sic*) college courses in the steps

¹ “Ollie” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

programat (*sic*) AIC for failure to provided (*sic*) support during dual enrollment at STCC resulting in fs for his classes.” The hearing was scheduled for January 21, 2020.

On January 10, 2020, after requesting and receiving an extension, Springfield filed its *Response to Parent’s Hearing Request*. According to the District, by the end of twelfth grade, Ollie had met all local graduation requirements and passed all sections of the Massachusetts Comprehensive Assessment System (MCAS) examination except biology. During the 2018-2019 school year, Parent indicated that she would refuse a high school diploma and on January 20, 2019, the parties entered into an agreement. Pursuant to that agreement, Ollie would complete the school year at the Renaissance High School and participate in MCAS preparation, after which he would either earn his high school diploma by passing the MCAS, or receive a Certificate of Attainment. In the event that the latter occurred, Springfield would continue to offer MCAS preparation support. The District contends that it proposed an appropriate IEP for the period from September 25, 2019 to April 22, 2020, which parent partially rejected;² that it offered an appropriate extended school year program for the summer of 2019, which Ollie did not attend; and that it proposed appropriate programming and placements for the fall of 2019 and spring of 2020. Moreover, the District argues that Parent’s rejections of the District’s proposals have effectively prevented Ollie from having the opportunity to pass the Biology MCAS exam and earn his high school diploma, and prevented the District from providing him with the transition services and tutoring it has offered during this year of post-secondary transition programming. As such, Springfield has offered a FAPE to Ollie and Parent is not entitled to relief. Finally, the District indicated that the BSEA lacks jurisdiction over claims of retaliation and issues of school district policy.

On January 22, 2020, Parent assented to Springfield’s request, filed January 7, 2020, for postponement of the hearing. A Pre-Hearing Conference was scheduled for February 6, 2020 and the Hearing scheduled for March 4, 6 and 13, 2020.³

On January 24, 2020, Parent filed a *Response* to the District’s *Response*, in which she argued that the BSEA does, in fact, have jurisdiction over her claim of retaliation because it involves “intentional retaliation for participating in [Ollie]’s right” to receive a FAPE in the form of harassment of her by the district, and a gag order and threats of lawsuits against her. She also provided additional detail regarding her initial allegations.

On February 3, 2020, Springfield filed the instant *Partial Motion to Dismiss Parent’s Hearing Request* seeking dismissal of so much of Parent’s *Hearing Request* as states claims of discrimination, retaliation, threat and abuse of power, and improper disclosure of personally identifiable information protected by the Family Education Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPPA). The District also requested an order denying certain requested remedies – specifically, a finding that Springfield has retaliated against parent and student for their participation in protected activities, and orders requiring

² According to Springfield Public Schools (Springfield or “the District”), Parent did not respond to or sign the prior proposed Individualized Education Program (IEP) dated May 31, 2019 to April 23, 2020, which included the District’s LLD extended school year program for the summer of 2019.

³ The Hearing was initially scheduled for March 2, 4, 6, 13, and 16, 2020, but the District informed the BSEA shortly thereafter that key witnesses were not available on March 2 or 16, 2020.

Springfield to write a policy for misconduct by top administration and pay for two additional college courses in the steps program – as outside of the BSEA’s authority.

Following the Pre-Hearing Conference that took place on February 6, 2020, during which the parties agreed to specific deadlines, I issued an Order on February 10, 2020 memorializing the schedule. Parent’s *Response* to Springfield’s *Motion to Dismiss* was due on February 14, 2020, and Parent’s *Amended Hearing Request*, should she choose to submit one, was due by close of business on February 21, 2020. The BSEA received neither by deadline. After 9:30 PM on February 24, 2020, Parent sent by facsimile a new *Hearing Request*, accompanied by a note stating that she had attempted to send a timely *Amended Hearing Request* but that the fax machine would not connect.

II. DISCUSSION

Whether Parent’s claims survive a partial *Motion to Dismiss* turns on both the procedural standards for such a motion and the substantive standards governing her claims.

A. Standard for Ruling on Motion to Dismiss *Hearing Request* Filed *Pro Se*

Pursuant to the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3) and Rule XVIIIB of the BSEA *Hearing Rules for Special Education Appeals*, 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. This rule is analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure and as such hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim. Specifically, what is required to survive a motion to dismiss “are factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”⁴ In evaluating the complaint, the hearing officer must take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff’s favor.”⁵ These “[f]actual allegations must be enough to raise a right to relief above the speculative level . . . [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact). . .”⁶

According to the First Circuit Court of Appeals, complaints filed by *pro se* parties should be construed liberally.⁷ “The policy behind affording *pro se* plaintiffs liberal interpretation is that if they present sufficient facts [to state a claim], the court may intuit the correct cause of action, even if it was imperfectly pled.⁸ This principle aligns with “[o]ur judicial system [, which] zealously guards the attempts of *pro se* litigants on their own behalf” while not ignoring the need for compliance with procedural and substantive law.⁹

⁴ *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

⁵ *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995).

⁶ *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted).

⁷ See *Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997).

⁸ *Id.*

⁹ *Id.*

Reading these standards together, to the extent Parent’s claims of discrimination, retaliation, threat and abuse of power, and improper disclosure of personally identifiable information protected by FERPA and HIPPA plausibly suggest an entitlement to relief, even if those claims are imperfectly pled, the District’s *Motion to Dismiss* must be denied.

B. BSEA Jurisdiction

Among other things, the IDEA, 20 U.S.C. § 1400 *et seq.* provides parents with a formal complaint process with respect to “any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.”¹⁰ In Massachusetts the BSEA is the administrative agency before which any impartial due process hearing regarding these issues takes place. The BSEA is an agency of limited jurisdiction; it has jurisdiction over requests for hearing filed by:

a parent or school district . . . on any matter concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities. A parent of a student with a disability may also request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 . . .¹¹

BSEA jurisdiction extends to IDEA-based claims as well.¹² The First Circuit held, in a case addressing exhaustion of claims filed under 42 U.S.C. § 1983, that the BSEA is not deprived of jurisdiction by the fact that certain claims are not based directly upon violations of the IDEA, nor by the fact that the relief a complainant seeks cannot be awarded by the agency.¹³ The IDEA’s exhaustion requirement ensures that the BSEA is able to develop a factual record and apply its “specialized knowledge” in an IDEA-based claim.¹⁴ Whether a claim is IDEA-based turns on whether the underlying claim is one of violation of the IDEA; a claim is not IDEA-based, and therefore not properly before the BSEA, where a student solely seeks money damages for tort like damages not subsumed in a federal claim, or “where there are no factual allegations to indicate that a dispute exists concerning the individual student’s eligibility under the IDEA or Section 504 or the discharge of the School’s procedural and substantive responsibilities under the IDEA or Section 504.”¹⁵

Bearing this in mind, I now examine the allegations in this case.

C. Application of Standards Permits Partial Dismissal

As Springfield argues that multiple claims should be dismissed, I consider each in turn.

¹⁰ 20 U.S.C. § 1415(b)(6).

¹¹ 603 CMR 28.08(3)(a).

¹² The IDEA’s exhaustion requirement is not limited to IDEA claims, as it “applies even when the suit is brought pursuant to a different statute so long as the party is seeking relief that is available under subchapter II of IDEA.” *Rose v. Yeaw*, 214 F.3d 206, 210 (1st Cir. 2000).

¹³ See *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 59, 64 (1st Cir. 2002).

¹⁴ *Id.* at 60.

¹⁵ *In Re Xylia*, (BSEA #12-0781, 18 MSER 373, 376 (Byrne 2012)); see *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 29 (2006); *Frazier*, 276 F.3d at 64.

1. *Claims of discrimination, retaliation, threat, and abuse of power*

Among other things, Parent asserts that a particular Springfield employee taunted and humiliated Ollie; and that in retaliation for her actions on behalf of her son, IEP meetings have been cancelled and/or attended by a Springfield attorney without notice, and the District has prevented her from meeting with the mayor, threatened her with a defamation lawsuit, and negatively impacted her ongoing work with other families as an advocate. Taking as true Parent's allegations and inferences that may be drawn therefrom, to the extent she asserts that Springfield's actions impeded her ability, and/or that of Ollie, to participate in IEP meetings, these claims appear to be IDEA-based.¹⁶ As such, they cannot be dismissed at this early stage in the case.

To the extent Parent alleges that Springfield's actions have impacted her ability to exercise other protected rights, these claims are neither directly within federal or state grants of jurisdiction to the BSEA, nor are they IDEA-based.¹⁷ Even construed liberally, they do not plausibly suggest an entitlement to relief.¹⁸

2. *Claims regarding improper disclosure of personal information*

Parent has alleged that Springfield improperly disclosed personally identifiable information protected by FERPA and HIPPA. These claims are neither directly within federal or state grants of jurisdiction to the BSEA, nor are they IDEA-based.¹⁹ Even construed liberally, they do not plausibly suggest an entitlement to relief.²⁰

3. *Requests for relief*

Springfield's *Motion* includes a request that I deny certain remedies requested by Parent, specifically, a finding that Springfield has retaliated against parent and student for their participation in protected activities, and orders requiring the District to pay for college courses and write a policy regarding administrator misconduct. I do not view a *Motion to Dismiss* as the appropriate vehicle to address remedies available to a moving party, should that party prevail at hearing. I will, however, note that I have dismissed the claims regarding retaliation, to the extent that they are unrelated to the exercise of rights guaranteed by the IDEA.

CONCLUSION

Upon consideration of Springfield Public Schools' *Partial Motion to Dismiss*, I find that to the extent they are IDEA-based (involving Parent's and Ollie's ability to participate in the IEP process), Parent's factual allegations regarding discrimination, retaliation, threat, and abuse of

¹⁶ *Blank*, 420 Mass. at 407; *Goldschin*, 460 Mass. at 222.

¹⁷ See 20 U.S.C. § 1415(b)(6); 603 CMR 28.08(3)(a); *Frazier*, 276 F.3d at 60.

¹⁸ See *Iannocchino*, 451 Mass. 636 (internal quotation and citation omitted).

¹⁹ See 20 U.S.C. § 1415(b)(6); 603 CMR 28.08(3)(a); *Frazier*, 276 F.3d at 60.

²⁰ See *Iannocchino*, 451 Mass. 636 (internal quotation and citation omitted).

power – construed liberally – plausibly suggest an entitlement to relief.²¹ Her allegations regarding improper disclosure of personal information and retaliation against her that impacted her ability to exercise other protected rights are beyond the jurisdiction of the BSEA and are, therefore, DISMISSED.

ORDER

The District’s Partial Motion to Dismiss is hereby DENIED as to IDEA-based claims, and ALLOWED as to other contested claims specifically addressed in this Ruling.

The matter will proceed to Hearing on March 4, 2020 on the original *Hearing Request*, as modified by the instant *Ruling*. To the extent Parent wishes to substitute her new Hearing Request, which was filed after the due date for amending the document, she may file a request to consolidate the two matters and/or withdraw the original *Hearing Request*. Either of these actions will result in the assignment of a new hearing date.

By the Hearing Officer:

Amy M. Reichbach
Dated: February 26, 2020

²¹ See *id.*