

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

In Re: Monomoy RSD

BSEA No. 2009834

**RULING ON MOTION TO DISMISS OF MONOMOY REGIONAL SCHOOL
DISTRICT**

INTRODUCTION

This case involves Parents' allegations that prior to and including the 2017-2018 school year (Student's third grade), the Monomoy Regional School District (Monomoy or District) failed to protect Student from bullying and harassment by other students despite its knowledge that such bullying and harassment was taking place. Parents allege that as a result, Student suffered from emotional trauma and distress, as did his family members. Parents further assert that on August 28, 2018, because of Monomoy's ongoing failure to protect Student, and Student's worsening emotional trauma, they removed him from District schools and unilaterally placed him in a private, sectarian, non-special needs school, which Student continues to attend.

At all relevant times, Student had a diagnosis of ADHD for which he received accommodations under a Section 504 Plan; however, Parents raise no claims arising under Sec. 504 of the Rehabilitation Act, the Individuals with Disabilities Education Act (IDEA), 20 USC Sec. 1400 et seq/, MGL c. 71B, or the regulations implementing these statutes. Rather, they seek reimbursement and prospective funding for the private school placement, which, they claim, has improved Student's emotional state and academic progress, which had been harmed by the prior bullying and Monomoy's failure to effectively address it.

PROCEDURAL HISTORY

On June 1, 2020, Parents filed a hearing request with the BSEA in which they allege that Monomoy failed to protect Student from ongoing bullying and harassment by other students, and that, as a result, Student and his family suffered emotional distress. Parents sought an order directing Monomoy to reimburse Parents for the costs of a private, sectarian school in which they placed Student beginning in August 2018, as well as to fund such placement prospectively.

A pre-hearing conference was held on September 17, 2020, and on September 18, 2020, Monomoy filed the instant *Motion to Dismiss* for failure to state a claim on which relief may be granted and for lack of jurisdiction over Parents' claims. Parents have not filed an *Opposition* or other response to the District's *Motion*. The hearing is scheduled for November 17, 18 and 19, 2020.

ISSUE PRESENTED

At issue is whether this matter should be dismissed because the BSEA lacks jurisdiction over the subject matter of the hearing request.

Position of District

Parents seek reimbursement and prospective funding for a private school placement that they obtained for Student as “self-help” for alleged bullying. Parents assert no nexus between that bullying and Student’s disability, however. They allege neither that Student’s 504 plan was deficient or was not implemented, nor that Monomoy committed any substantive or procedural violations of either Section 504 or federal or state special education statutes. As such, the BSEA lacks jurisdiction over Parents’ claims.

Position of Parents

Because Parents have not responded to the Monomoy’s *Motion*, there is no indication of their position on the issue of BSEA jurisdiction over this matter.

FACTS ALLEGED IN HEARING REQUEST

For purposes of the *Motion to Dismiss*, the following factual assertions, gleaned from the hearing request and attachments thereto, are deemed to be true, and are considered in the light most favorable to the party opposing the *Motion*, i.e., Parents¹

1. Student is a minor child who is a resident of Harwich, MA, which is part of the Monomoy RSD. Until approximately August 2018, Student attended an elementary school within the District. Student has a diagnosis of ADHD. While he was enrolled in Monomoy, Student received accommodations for his ADHD diagnosis under a Section 504 Plan.
2. During his years in Monomoy, particularly during the 2017-2018 school year, Student was subject to multiple incidents of bullying and harassment by other students.
3. In a letter dated January 23, 2018, Parents informed Student’s elementary school principal that Student had been a victim of bullying and harassment, and requested that Student be provided “all the protections under state and federal law to protect him from physical harassment and verbal abuse.”

¹ In evaluating a *Motion to Dismiss*, a hearing officer must consider as true all facts alleged by the party opposing dismissal and should not dismiss the case if those facts, if proven, would entitle the non-moving party to relief that the BSEA has authority to grant. Rule 12(b)(6), *Federal Rules of Civil Procedure*; *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Ocasio-Hernandez v. Fortunato-Burset*, 640 F. 3d 1 (1st Cir. 2011); *Caleron-Ortiz v. LaBoy-Alverado*, 300 F.3d 60 (1st Cir. 2002).

4. On January 25, 2018, Monomoy began the process of investigating multiple incidents of alleged bullying.
5. According to Parents, despite its knowledge of Student's victimization, Monomoy failed to keep Student safe from "assaults and harassments" and "failed to provide proper services, supports and protections which did seriously injure [Student] and his family emotionally." To alleviate the harm to Student, Parents removed him from Monomoy and enrolled him in a private religious school which is "providing the needed services" and has "improved [Student's] emotional trauma and academic progress"
6. Parents do not allege that Monomoy violated any provision of the applicable federal or state special education statutes or of Section 504 of the Rehabilitation Act, or that Monomoy has deprived Student of a FAPE. Parents do not allege that they have rejected Student's 504 plan during the relevant time period, or that Student's 504 plan/s and/or accommodations have been inappropriate or have not been implemented.
7. Parents' hearing request does not allege any nexus between Student's disability and either the incidents of harassment and bullying or the District's allegedly inadequate response.

DISCUSSION

The BSEA has jurisdiction to resolve "disputes between and among parents, school districts, private schools and state agencies concerning (i) any matter concerning the eligibility, 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 or [the IDEA] and its regulations; or (ii) a student's rights under Section 504 of the Rehabilitation Act of 1973...and its regulations." MGL c. 71B, Sec. 2A. *See also*: 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a).

The instant dispute does not concern any of these issues. The hearing request makes no mention of "eligibility, evaluation, education program or education placement...or the provision of [FAPE].." to Student, and does not invoke or refer to Student's rights under any of the statutes or regulations referred to above. While the hearing request mentions that Student had received a diagnosis of ADHD, and the attachments to the request indicate that Student had a Section 504 plan, the request makes no claim of any connection between Student's disability and either the bullying or the District's handling of the situation.

Specifically, Parents claim neither that the bullying and harassment were motivated by or related to Student's disability, nor that Monomoy's allegedly inadequate response either was motivated by Student's disability or was flawed because it improperly failed to take Student's disability into account. Moreover, Parents do not assert that Monomoy committed any substantive or procedural violations of the IDEA, MGL c. 71B, or Sec. 504. In short, the hearing request alleges no nexus between Student's disability and the bullying or the District's

response to it that would potentially bring the dispute within the domain of BSEA jurisdiction.²

Rather, Parents claim that Student (and his family) suffered personal injury in the form of emotional distress as a result of bullying by one or more fellow students and an inadequate or ineffective response by the District. Parents' complaint relates not to his status as a child with a disability, but to his "general student status." See *In Re: Springfield Public Schools and Xylia*, BSEA No. 12-0781, 18 MSER 373 at 377 (Byrne, 2012). As such, the BSEA lacks jurisdiction to adjudicate Student's claim, and dismissal for lack of jurisdiction is appropriate.³

CONCLUSION AND ORDER

For the foregoing reasons the *Motion to Dismiss* of the Monomoy Regional School District is GRANTED and this matter is DISMISSED with prejudice.

By the Hearing Officer

/s/Sara Berman

Sara Berman

Dated: November 6, 2020

EFFECT OF DISMISSAL

This Dismissal by the Bureau of Special Education Appeals is a final action and is not subject to further agency review. Because 20 U.S.C. s.1415(i)(2)(A) requires the Bureau decision to be final and subject to no further agency review, the Bureau cannot permit motions to reconsider or to re-open a Bureau decision once it is issued. Any party aggrieved by the Bureau decision may file a complaint in the U.S. District Court for the

² Parents frame the relief sought, retroactive and prospective funding of Student's private school placement, as remediation for the emotional trauma and distress that Student allegedly suffered, and not as a "self-help" measure to provide FAPE when a district has failed to do so. The hearing request does not assert any of the usual preconditions for an order of reimbursement for a unilateral placement, namely, that the program and services offered by the District do not constitute FAPE, and that the program chosen by Parents is appropriate.

³ I note that while the District did not explicitly cite failure to state a claim upon which relief may be granted as a basis for *its Motion to Dismiss*, such basis for dismissal is subsumed in the claim of lack of jurisdiction, and constitutes a basis for dismissal of this matter.

District of Massachusetts or in the Massachusetts Superior Court within ninety (90) days from the date of dismissal for review of the Bureau decision. 20 U.S.C. s.1415(i)(2)(B).