

**COMMONWEALTH OF MASSACHUSETTS**

***DIVISION OF ADMINISTRATIVE LAW APPEALS***

***Bureau of Special Education Appeals***

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Student

&  
Malden Public Schools

BSEA No. 2102352

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**RULING ON MOTION TO DISMISS**

On October 29, 2020, Parents filed a Request for Hearing with the BSEA in which they alleged that the Malden Public Schools (Malden or School) had unlawfully failed to provide them with a complete copy of and access to inspect Student's entire education record. Parents seek an order directing Malden to provide "access to (for inspection) and a complete copy of [Student's] educational record as maintained by the Malden Public Schools per 603 CMR 23.00, IDEA, and FERPA."

Parents allege that they requested Student's records from Malden on three occasions pursuant to the IDEA, as well as the Family Education Rights and Privacy Act (FERPA) and Massachusetts student record regulations, 603 CMR 23.00. The requests were dated October 1, 2019, August 5, 2020 and October 4, 2020. Parents assert that Malden provided partial copies of the records in response to the first two requests but did not respond to the third request. Parents further claim that Malden never allowed them to inspect the records as required by the pertinent statutes and regulations.

On November 3, 2020, Malden filed a *Motion to Dismiss for Lack of Subject Matter Jurisdiction*. Parents filed their *Opposition* thereto on November 3, 2020, stating that according to pertinent law and prior BSEA decisions<sup>1</sup>, the BSEA does have jurisdiction over stand-alone disputes regarding parental access to the school records of special education students. Malden did not request oral argument, Parents waived their opportunity for same, and I find that such argument is not necessary for me to issue a ruling on this *Motion*.

In its *Motion*, Malden claims that any dispute regarding its alleged failure to provide Student's education records falls outside of the statutory definition of the BSEA's jurisdiction in that it does not directly involve "the identification,

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<sup>1</sup> Prior BSEA decisions do not constitute binding precedent, but may be relied on for guidance in subsequent cases.

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...” Rather, according to Malden, Parents must seek relief from the Superintendent and the School Committee under a process set forth in the Massachusetts Student Record Regulations, 603 CMR 23.09.

Malden’s argument is not supported by the pertinent law. As stated by Parents in their *Opposition*, the undersigned hearing officer addressed this issue in *In Re: Student v. Boston Public Schools, Ruling on Motion to Dismiss*, BSEA No. 1900241 (Berman, 2018). That *Ruling* stated that the BSEA had jurisdiction over a hearing request alleging that Boston had failed to provide the parent of an eligible student with her child’s complete educational record in a timely manner. The ruling noted that the right of parents to examine the educational records of students with disabilities constitutes one of the procedural safeguards that is deemed an essential component of FAPE. As such, a dispute over access to records of special education students concerns “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...”.<sup>2</sup> and may be a proper subject for a due process hearing.<sup>3</sup> Hearing Officer Lindsay Byrne made the same determination in a case with similar facts. *In Re: Guillermo & Boston Public Schools, Ruling on Boston’s Motion to Dismiss*. BSEA No. 1900219 (Byrne, 2018).<sup>4</sup>

I find that the reasoning in the above-cited cases is applicable to the above-entitled matter. As a child with disabilities who receives special education services from Malden, Student and Parents are entitled to all of the procedural protections set forth in the IDEA and MGL c. 71B. These include the right to “examine all records relating to such child” 20 USC Sec. 1415 (b)(1), as detailed in the corresponding regulation, 34 CFR 300.613, which provides that school districts must “(a)...permit parents to inspect and review any education records relating to their children that are collected, maintained or used by the agency under this part...without unnecessary delay and before any meeting regarding an IEP or any hearing...or resolution session...and in no case more than 45 days after the request has been made...” *Id.* Additionally, pursuant to 34 CFR §300.616, school districts “must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.” *Id.*

Based on the foregoing, the BSEA has jurisdiction over Parents’ claim and, if Parents meet their burden of persuasion, the BSEA has the authority to grant them the relief requested. Parents’ claims may be heard, and Malden’s *Motion to Dismiss* must be denied.

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<sup>2</sup> MGL c. 71B§2A(a); see also 20 USC §1415(b); 34 CFR 300.507(a); 603 CMR 28.03(3)

<sup>3</sup>The Massachusetts Student Record Regulations state explicitly that nothing in those regulations precludes parents from seeking enforcement in “a court or administrative agency of competent jurisdiction.” 603 CMR 23.09(5). (Emphasis supplied).

<sup>4</sup> See also *In Re Newton Public Schools*, BSEA No. 1602067 (Berman, 2016) which reaches similar conclusions. The case cited by the District, *In Re: Taunton Public Schools*, BSEA No. 13-4738 (Figueroa, 2013) is factually dissimilar to the instant matter and is not applicable here.

## CONCLUSION AND ORDER

For the foregoing reasons, the *Motion to Dismiss* of the Malden Public Schools is DENIED. The parties and hearing officer will discuss further proceedings in a conference call on November 17, 2020

By the Hearing Officer,

/s/ Sara Berman

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Dated: November 13, 2020