

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

In re: Stewart<sup>1</sup>

BSEA #2101061

**RULING ON PARENTS' MOTION TO CONSOLIDATE**

This matter comes before the Hearing Officer on the unopposed Motion filed by Parent on November 16, 2020 to consolidate the case filed on behalf of Stewart against Acton-Boxborough Regional School District (ABRSD, or the District) with a case filed on behalf of his brother, BSEA #21023253. The parties discussed this Motion during the initial Conference Call on November 25, 2020, though the District never filed a written 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, Parents' *Motion to Consolidate* is ALLOWED IN PART.

**FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY<sup>2</sup>**

On October 29, 2020, Parent filed two Hearing Requests against the District, the instant matter involving Stewart and the other, his brother.<sup>3</sup> Regarding Stewart, Parent alleged that he has developmental and socio-emotional disabilities and that ABRSD discriminated against him and against her, on the basis of race, ethnicity, color, disability and English language learner status. According to Parent, among other things, the District created a hostile environment by failing to respond appropriately to Stewart's allegations of bullying; failed to convene a Team meeting in response thereto; improperly involved the School Resource Officer (SRO) in behavioral incidents; unlawfully seized Stewart and his mother and used excessive force on them; disclosed personal information about Stewart to the police department; improperly utilized the SRO to investigate Stewart and his brother's absences; and implemented a 1:1 aide without Parent's consent and without convening a Team meeting to discuss the need for said service. Parent requested a declaration of procedural and substantive violations; a finding that ABRSD violated a number of laws, regulations, policies, memoranda, and the District's handbook, including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, the Family Educational Rights and Privacy Act, and the Constitution. She also requested that the BSEA find that the District committed intentional infliction of emotional distress, loss of consortium, false imprisonment, and false arrest; find that Parent has exhausted her administrative remedies; and award Parent compensatory services, monetary and punitive damages, and attorneys' fees and costs. The matter was scheduled for hearing on December 3, 2020.

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<sup>1</sup> "Stewart" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

<sup>2</sup> The information in this section is drawn from the parties' pleadings and is subject to revision in further proceedings.

<sup>3</sup> The case involving Stewart's brother was assigned to Hearing Officer Rosa Figueroa.

On November 13, 2020, the District filed an assented-to request for a one-week extension to file its *Response* to Parent's *Hearing Request*, and on November 16, 2020, filed that *Response*. ABRSD denied Parent's allegations that it had discriminated against Stewart, failed to adhere to its policies and procedures regarding bullying, or acted in a way that impeded Stewart's access to a FAPE. The District also contended that many of Parent's claims were outside the BSEA's jurisdiction and that stated that it would be filing a *Partial Motion to Dismiss* regarding those claims.

On November 16, 2020, Parent filed an assented-to *Motion to Postpone* this matter for a period of 90 days. On the same date, Parent also filed the instant *Motion to Consolidate*, contending that this case and the case involving Stewart's brother "arise out of the same facts, and the consolidation of the two matters will (1) conserve administrative resources, (2) avoid inconsistent rulings, (3) eliminate the need for witnesses to testify twice to the same set of facts, (4) avoid scheduling conflicts, and (5) provide a singular forum for discovery issues." As such, she argued, the two cases should be consolidated for all purposes.

The District did not file a written response to Parent's *Motion to Consolidate*, but during the Conference Call on November 25, 2020, ABRSD indicated it would be amenable to consolidation for limited pre-hearing purposes, in the interests of efficiency. On the same day, I issued an Order allowing Parent's assented-to *Motion to Postpone* and memorializing the parties' agreement as to how the case would proceed. Specifically, the District would file a written response to Parent's *Motion to Consolidate*, if any, by early December, and a *Partial Motion to Dismiss* in mid-December. A virtual *Motion Session* was scheduled for January 8, 2021 regarding the latter; a virtual Pre-Hearing Conference was scheduled for January 22, 2021; and the Hearing was scheduled for March 10 and 12, 2021.

On December 18, 2020, the District filed a *Partial Motion to Dismiss* Parent's *Hearing Request*, and on December 21, 2020, Parent requested an extension through January 4, 2021 to file its *Response*. I granted that extension.

## DISCUSSION

### A. Legal Standards

BSEA hearings are governed by BSEA *Hearing Rules*, 603 CMR 28.00, federal due process procedures, and the Massachusetts Administrative Procedures Act, M.G.L. c. 30A. The Preamble to the BSEA *Hearing Rules* explains that unless modified specifically by the Rules, hearings are conducted under the Formal Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.* Although the *Hearing Rules* do not specifically provide for consolidation of matters, pursuant to 801 CMR 1.01(7)(j), where multiple proceedings involve "common issues," the Hearing Officer may consolidate them "with the concurrence of all parties and any other tribunal that may be involved." Furthermore, group hearings may occur "if it appears from the request for a hearing or other written information submitted by the Parties that

the matters involve questions of fact which are identical,”<sup>4</sup> but “[i]f, at any stage of such group hearing, the Presiding Officer finds that any individual appeal involves questions of fact unique to the individual Petitioner . . . the Presiding Officer shall sever the appeal and hear it individually.”<sup>5</sup>

Furthermore, although Hearing Officers are not bound by the rules of civil procedure, these rules are often consulted for guidance. Pursuant to Rule 42 of both the Massachusetts and the Federal Rules of Civil Procedure, “If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.”<sup>6</sup> As described by former Hearing Officer Bill Crane, in determining whether to consolidate cases, Hearing Officers should assess whether the “balance of considerations favors consolidation.”<sup>7</sup>

Mindful of these principles, in 2015, Hearing Officer Catherine Putney-Yaceshyn and the undersigned issued a Joint Ruling in *In Re: Norton Public Schools and Harrison & Isabella*, BSEA #1504277 and #1504282, 21 MSER 75. In this *Ruling* on a party’s *Motion to Consolidate*, we concluded that “the goal of administrative efficiency is best served by consolidating the matters only insofar as they involve common questions of law and fact.” We consolidated the matters for purposes of pre-hearing proceedings, including Conference Calls and Rulings, but held that the cases would proceed separately to hearings.

#### B. Application to the Instant Matter

In support of her *Motion to Consolidate*, Parent alleges that her sons’ claims arise from the same set of facts. This is only partially accurate. At the time Parent’s claims arose, Stewart and his brother were in different classrooms, and different schools, within ABRSD. Furthermore, the allegations in Stewart’s hearing request involve facts that are distinct and separate from the allegations involving his brother. For instance, in this case, Parent contends that the District responded inadequately to bullying of Stewart by failing to convene a Team meeting, among other things. In addition, Parent asserts that the District improperly utilized an SRO in response to Stewart’s behavioral incidents and that the District implemented a 1:1 aide for him without parental consent. These claims give rise to legal questions that are unique to Stewart.

There may well be, however, some common questions of law and fact, particularly those that involve the District’s treatment of Parent and claims for which Parent seeks exhaustion, which ABRSD has indicated it believes are outside the scope of the BSEA’s jurisdiction. As to

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<sup>4</sup> 801 CMR 1.02(9)(a),

<sup>5</sup> 801 CMR 1.02(9) (b).

<sup>6</sup> Fed. R. Civ. P. 42(a); Mass. R. Civ. P. 42(a), as amended, 423 Mass. 1402 (1996).

<sup>7</sup> *In Re: Mashpee Public Schools*, BSEA #080998, #081317, #081316, 14 MSER 143 (Crane 2008). In *Mashpee*, Hearing Officer Bill Crane noted that the three cases arose from the same set of facts, allegations regarding abuse of each student in the same special education classroom that occurred as a result of the conduct of the same teacher. He concluded that several hearings would require repetition of much of the testimony, with the possibility of different testimony from the same witness before the same hearing officer regarding the same topic, and that Parents had effectively waived their rights to maintain the confidentiality of each student from each other by requesting consolidation. As such, Hearing Officer Crane determined that the balance of considerations favored consolidation for the purposes of the evidentiary hearing with respect to the three students.

these claims, the goal of administrative efficiency is best served by consolidating the matters for the limited purposes of considering them.

In determining whether to consolidate these matters, I note that ABRSD did not file any opposition to Parent's *Motion*, though the District was specifically invited to do so. I do take administrative notice, however, that the parties stated during our Conference Call that Hearing Officer Figueroa had indicated that she would deny the *Motion to Consolidate* filed by Parent in the matter before her. As such, further communication between the parties and the Hearing Officers is required to determine whether all parties and tribunals involved concur in the consolidation of the matters for pre-hearing proceedings "only insofar as they involve common questions of law and fact."<sup>8</sup>

## CONCLUSION

Applying the principles set forth above to the matter before me, while balancing the need for administrative efficiency, I hereby GRANT, IN PART, Parent's *Motion to Consolidate* BSEA #2101061 and BSEA #2103253, only for purposes of pre-hearing proceedings and only insofar as they a) involve common questions of law and fact, and b) the parties and tribunals concur in such consolidation. The two cases will proceed separately to evidentiary hearings and separate, final decisions for each student will be issued. Unless each party, and each Hearing Officer, separately indicates in writing its concurrence to such consolidation (to include arguments as to the District's pending *Partial Motion to Dismiss*), a Conference Call will be scheduled with all parties and both Hearing Officers in the near future to make such a determination.

## **ORDER**

- 1) BSEA #2101061 and BSEA #2103253 are consolidated only for the purposes of pre-hearing proceedings involving common questions of law and fact, to the extent all parties concur. A Conference Call will be scheduled within the next two weeks to make this determination.
- 2) In the interim, the above-referenced matter remains scheduled for hearing on March 10 and 12, 2021, with a Motion Session on January 8, 2021 and a Pre-Hearing Conference on January 22, 2021.

By the Hearing Officer:

/s/ Amy M. Reichbach

Dated: December 23, 2020

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<sup>8</sup> *In Re: Norton Public Schools and Harrison & Isabella*, BSEA #1504277 and #1504282, 21 MSER 75 (Putney-Yaceshyn and Reichbach, 2015).