

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

Ollie¹

&

BSEA #2102164

Springfield Public Schools

RULING ON SCHOOL'S MOTION TO DISMISS

This matter comes before the Hearing Officer on the Motion of the Springfield Public Schools ("School") to Dismiss. On September 16, 2020 the Parent filed a Hearing Request alleging that procedural and substantive violations of the Student's and Parent's IDEA rights occurred at Team Meetings held on August 17, 2020 and September 10, 2020. The Parent filed an Amended Hearing Request on December 2, 2020 claiming additional violations and asserting that the School denied her and the Student meaningful opportunities to participate in Meetings held on August 17, September 10, October 1, and November 20, 2020, resulting in a denial of a free, appropriate public education to Ollie. The School's timely Responses to both Hearing Requests included a Partial Motion to Dismiss on jurisdictional, mootness and issue preclusion grounds.

The Parties have been involved in contentious, voluminous and seemingly never-ending litigation for several years. The original Hearing Request in the instant matter (21-02164) was filed while an earlier matter remained pending at the BSEA. That matter, Ollie and the Springfield Public Schools, BSEA# 20-07894, covered issues arising between June 2017 and August 2020. Critical to this matter, the Decision issued in 20-07894 on November 11, 2020 found that the April 2020 – April 2021 IEP offered by Springfield was reasonably calculated to provide Ollie with a free appropriate public education and that no procedural violations of the Student's or Parent's IDEA rights occurred during multiple meetings and communications relevant to the development of that IEP or during its implementation. Thus, the issues presented by the Parent for decision here are limited in time and scope. The 2020-2021 IEP approved by

¹ "Ollie" is a pseudonym chosen by the BSEA for use in documents available to the public to protect the privacy of the Student and family.

the BSEA in BSEA#20-07894 is currently being implemented and constitutes the “placement pending” while this appeal proceeds to hearing and decision.

LEGAL FRAMEWORK

A. Jurisdiction

The jurisdiction of the BSEA is limited to deciding disputes among parents/students and publicly funded entities that provide, or are authorized to provide, special education services to individuals with disabilities under the age of 22. In particular, the BSEA’s federal subject matter jurisdiction is confined to determining the eligibility for, and the appropriate provision of, a free appropriate public education as contemplated by the IDEA, 20 U.S.C. Sec. 1400 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec 794. Where a party requesting a BSEA hearing does not assert a substantive or procedural violation of a special education statute, and does not request relief authorized under those statutes, the BSEA lacks jurisdiction. *Fry v. Napoleon Community Schools*, 137 S. Ct. 743(2017).

B. Motions to Dismiss

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. (1st Circ. 2011); *Doe v Attleboro*, 2011 U.S. Dist. LEXIS 98235 (Mass.2011) (not in official reporter).

DISCUSSION

The Parent’s Requests for Hearing are inartfully drafted and contain multiple phrases that are difficult to interpret or fit into an IDEA framework. The School’s desire to eliminate, in the interests of speed, economy and administrative efficiency, issues that are “minor”, resolved, or otherwise unlikely to result in a favorable outcome for the Parent is understandable. The Parent, however, is entitled to present all her timely, relevant and statutorily grounded claims no matter how weak, and is also entitled to the Hearing Officer’s assistance in properly framing those issues. Distilling the allegations she has attempted to set out is necessary both to properly structure the Hearing and to fully air her grievances. BSEA Rule IX B.

For ease of evaluation the Parent's claims are separated into four groups.

Group 1

Group 1 consists of issues that have been partially or fully resolved during the pendency of this complaint. These include: the transfer of decision-making authority for age of majority student; and the School's response to Parent's request for an OT evaluation. The School argues that these complaints have been resolved and should, therefore be dismissed as moot. The Parent, however, maintains that her objections to the School's actions in these areas should be heard, otherwise there would be no consequence for continuous low-level procedural violations. Keeping in mind the admonition to permit unrepresented parties significant latitude to air grievances, and to generously interpret the guiding mootness principle "capable of repetition but evading review", these issues may remain for factual determination. The Parent should be given every reasonable opportunity to establish her version of the facts and to demonstrate the harm for which she seeks redress.

Group 2

This group is composed of alleged procedural violations that, according to the Parent, consist of discrete instances of non-feasance. This includes: failure to document options rejected at the September 10, 2020 meeting, failure to include an autism specialist, an assistive technology specialist and/or a special educator on the Teams, failure to complete a specific learning disability checklist, failure to include reading levels/materials on a proposed IEP and failure to consider materials presented by the Parent at Team meetings. Resolution of the Parent's complaints about these issues may be had primarily by turning to the documents and the applicable statutory language to determine whether a duty is owed and whether it was breached. The burden is on the Parent to show a duty, a breach of duty and the resulting harm to the Student. This is a factual burden to be shouldered at hearing. Dismissal at this juncture would be premature.

Group 3

Group 3 consists of Parental allegations of mistreatment and malfeasance occurring during meetings between the Parties between August 2020 and December 2020. The Parent alleges that the behavior and language of school-affiliated attendees limited her ability to meaningfully participate in the development, review and/or resolution of Ollie's 2020-2021 IEP, denied Ollie the opportunity to participate in the meetings, and resulted in a denial of a free appropriate public education to Ollie. The School does not seek dismissal of any Parental claims related to the conduct of meetings, instead calling upon the Parent to prove her allegations.

Group 4

This group consists of Parental allegations which the BSEA, as a statutorily circumscribed administrative agency, has no authority to resolve. These claims include: failure of a Springfield school principal to carry out assigned job duties ²; and systemic racism within the Springfield Public Schools resulting in unspecified harm to Ollie. These claims do not implicate the IDEA or M.G.L. c. 71B as they do not concern the development or implementation of an individual student IEP. They are, therefore, subject to dismissal.

CONCLUSION

After applying the appropriate jurisdictional and procedural principles to the Parent's Hearing Requests, and after carefully considering the Parent's language and intent alongside the School's objections, the following issues remain for resolution at Hearing:

I. A) Whether the Team meetings held on August 17, 2020 and September 10, 2020 complied with the procedural requirements set out in 20 U.S.C. 1414 (d) (B); 34 CFR 300.321?

B) If not, whether Ollie suffered substantial educational harm as a result?

In particular, the following questions must be answered:

1. Did the School fail to include a required autism specialist on the Teams and, if so, did that failure deny Ollie a free appropriate public education?

2. Did the School fail to include a required assistive technology specialist on the Team and, if so, did that failure deny Ollie a free appropriate public education?

3. Did the School fail to include a required special education teacher on the Team and, if so, did that failure deny Ollie a free appropriate public education?

4. Did the School fail to complete a required checklist concerning the identification of a specific learning disability, and, if so, did that failure deny Ollie free appropriate public education?

5. Did the School fail to consider information brought to the Teams by the Parent and, if so, did that failure deny Ollie free appropriate public education? (work samples, reading levels, book titles)

² I note that Ollie is not attending a Springfield public school, and the principal complained of has had no responsibility for the implementation of Ollie's IEP during the time period covered in the instant dispute.

6. Did the School fail to document options rejected at the September 10, 2020 Team meeting, and if so, did that failure deny Ollie free appropriate public education?

II. A) Whether the School denied the Parent and Ollie a meaningful opportunity to participate in meetings held on

1. August 17, 2020
2. September 10, 2020
3. October 1, 2020
4. November 20, 2020

by reason of harassing, intimidating or mocking behavior or language?

And if so,

B) Whether Ollie was denied a free appropriate public education as a result of those actions?

III. Whether a proposed IEP or revisions resulted from the August 17, 2020 and the September 10, 2020 Team meetings and, if so, whether that IEP is reasonably calculated to provide free appropriate public education to Ollie?

IV. A) Did the School fail to timely respond to a Parental request for an occupational therapy evaluation? And if so, did that failure deny Ollie a free appropriate public education?

V. Did the School fail to make transfer of educational decision-making authority paperwork available to the Student in a timely manner, and if so, did that failure deny Ollie a free appropriate public education?

ORDER

The School's Motion to Dismiss is GRANTED in part. The Parent's claims of dereliction of duty by a Springfield public school principal and of systemic racism are DISMISSED. All other claims, enumerated above, are subject to proof at Hearing.

By the Hearing Officer

Lindsay Byrne

Dated: January 11, 2021