

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

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

BSEA #2104756

**RULING ON NEEDHAM PUBLIC SCHOOLS' MOTION TO DISMISS**

This matter comes before the Hearing Officer on the Motion of the Needham Public Schools (Needham, or the District) to Dismiss the Hearing Request filed by Ms. A on behalf of Twyla (*Motion to Dismiss*). Needham filed its *Motion to Dismiss* on March 8, 2021. Ms. A has not responded to Needham's Motion, nor did she appear for the Conference Call that took place on March 16, 2021. Neither party has 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, Needham's *Motion to Dismiss* is hereby DENIED.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On February 25, 2021, Ms. A filed a *Hearing Request* with the Bureau of Special Education Appeals (BSEA) against Needham. Ms. A described herself as Twyla's Educational Surrogate Parent and attached to the *Hearing Request* a copy of a notice from the Department of Elementary and Secondary Education (DESE) dated March 8, 2019 appointing her as Twyla's Special Education Surrogate Parent (SESP). According to Ms. A, Twyla attends school at the ACCEPT Collaborative, where she has been placed by Needham. In her *Hearing Request*, Ms. A asserted that Twyla has not received instruction and services accepted on her behalf, particularly during school closures due to the COVID-19 pandemic, and as such is entitled to \$100,000 in compensatory services. The Hearing was scheduled for April 1, 2021.

On March 8, 2021, the District filed its *Motion to Dismiss* on the grounds that Ms. A had been terminated as Twyla's SESP on March 3, 2021.<sup>2</sup> According to Needham, Twyla is presently in the custody of the Department of Children and Families. She resides in the Town of Needham, which is programmatically responsible for her education, and her father lives in the Town of Somerset, which is financially responsible. In its *Motion to Dismiss*, Needham argued that Ms. A lacks standing to pursue her *Hearing Request*. Moreover, the newly appointed SESP has subsequently rescinded Ms. A's rejection of the Individualized Education Program (IEP) upon which the *Hearing Request* was based. The District attached to its *Motion to Dismiss* copies of the following documents: DESE's Assignment of School District Responsibility, dated May 22,

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

<sup>2</sup> At this time, the District also requested an extension to file its *Response* to Ms. A's *Hearing Request*. Following the Conference Call that took place on March 16, 2021, for which Ms. A failed to appear, I allowed this request and extended the deadline for the District's *Response* to March 25, 2021.

2019; DESE’s letter appointing Ms. A as Twyla’s SESP, dated March 8, 2019; the *Hearing Request* filed by Ms. A; an email that appears to have been written by Megan Ronzio, the Program Director of the Special Education Surrogate Parent Program on March 3, 2021 indicating that she had ended Ms. A’s appointment as Twyla’s SESP and providing contact information for a new SESP; and two letters written by Ms. Ronzio, one to Ms. A on March 3, 2021 notifying her that her rights and responsibilities as Twyla’s SESP had ended as of that date, and one to the newly appointed SESP, also dated March 3, 2021, notifying her of her appointment.

On March 22, 2021, Ms. A filed a request to postpone the Hearing for six weeks until May 15, 2021 due to religious holidays and her desire to receive a COVID vaccine prior to Hearing.<sup>3</sup>

## DISCUSSION

### A. Legal Standards

The outcome of the District’s Motion is governed by the application of three legal standards: the standard by which a Motion to Dismiss is evaluated; regulations concerning BSEA jurisdiction; and regulations and policies governing special education decision-making authority.

#### i. Standard for Ruling on Motion to Dismiss

Pursuant to the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3) and Rule 17B 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.”<sup>4</sup> 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.”<sup>5</sup> 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). . . .”<sup>6</sup>

#### ii. BSEA Jurisdiction

The BSEA 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

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<sup>3</sup> The date requested by the Special Education Surrogate Parent is a Saturday. In the event that I allow her postponement request, the parties will select a different date for a virtual Hearing.

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

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

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

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 of the Rehabilitation Act of 1973. . . .”<sup>7</sup>

iii. Authority to Make Educational Decisions

Massachusetts regulations recognize that the term “Parent” refers to a child’s mother or father, but further define the term “for purposes of special educational decision-making,” in pertinent part, as “father, mother, legal guardian, person acting as a parent of the child, foster parent, or an educational surrogate parent appointed in accordance with federal law.”<sup>8</sup>

B. Application of Legal Standards

To survive a motion to dismiss, Ms. A need only make “factual allegations plausibly suggesting . . . an entitlement to relief.”<sup>9</sup> In determining whether she has met this burden I must take her allegations as true, as well as any inferences that may be drawn from them, even if the allegations are doubtful in fact.<sup>10</sup> In the matter before me, Ms. A included with her *Hearing Request* the DESE notice appointing her as Twyla’s SESP and alleged that Needham had failed to provide Twyla with the services and supports to which she was entitled. Taking as true Ms. A’s allegations, and any inferences that may be drawn therefrom, I cannot determine at this time that Ms. A is not a “Parent” for purposes of BSEA jurisdiction over her *Hearing Request*.

Here, the District is essentially asking a Hearing Officer to look beyond the four corners of a Hearing Request filed by an individual who asserts that she has standing, to evaluate whether the complainant in fact had educational decision-making authority and thus had standing at the time of the filing. In these circumstances, the appropriate vehicle for such a determination is a *Motion for Summary Decision*, rather than a *Motion to Dismiss*.

CONCLUSION

Upon consideration of Needham Public Schools’ *Motion to Dismiss* Ms. A’s *Hearing Request*, I cannot find that the BSEA lacks jurisdiction over this matter. The District’s *Motion to Dismiss* is DENIED. Should this case proceed to Hearing, Ms. A has the burden of establishing that she had the authority to make educational decisions on behalf of Twyla at the time she filed her *Hearing Request* on March 8, 2021, notwithstanding the District’s assertions otherwise.

ORDER

The District’s *Motion to Dismiss* Ms. A’s *Hearing Request* is hereby DENIED.

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<sup>7</sup> 603 CMR 28.08(3)(a).

<sup>8</sup> 603 CMR 28.02(15).

<sup>9</sup> *Iannocchino v. Ford Motor Co.*, 451 Mass. at 636 (internal citation and quotation marks omitted).

<sup>10</sup> See *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. at 223; *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. at 407.

Needham's *Response* to Ms. A's *Hearing Request* is due by close of business on March 25, 2021. The District is directed to indicate its assent or opposition to Ms. A's postponement request at this time. If Needham assents to the request, the District should also identify dates during the week of May 17, 2021 that it is available for Hearing. In the meantime, the Hearing remains scheduled for April 1, 2021. Exhibits and witness lists will be due March 26, 2021.

By the Hearing Officer:

           /s/ *Amy M. Reichbach*

Dated: March 23, 2021