

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

**In Re: Student v. Lawrence Public Schools and DESE**

**BSEA # 2107071**

**RULING ON LAWRENCE PUBLIC SCHOOLS' PARTIAL MOTION TO DISMISS  
FOR LACK OF JURISDICTION AND/OR FAILURE TO STATE A CLAIM**

This matter comes before the Hearing Officer on the Lawrence Public Schools' (District) *Motion to Remove Hearing Request from Accelerated Status, Partial Motion to Dismiss for Lack of Jurisdiction and/or Failure to State a Claim, and Motion to Challenge the Sufficiency on any Remaining Claim (Motion)* which was filed with the BSEA on March 25, 2020. Parent did not respond to the *Motion* except to write to the BSEA on March 29, 2021 that she had intended to file against both the district and DESE. Parent is proceeding *pro se* at this time.

This Ruling addresses the District's *Partial Motion to Dismiss for Lack of Jurisdiction and/or Failure to State a Claim only*. In the instant matter, the District seeks dismissal of Parent's monetary claims in which she seeks \$200,000 for the "mistreatment, abuse of power, discrimination, emotional damage and mishandling of the case". The District asserts that the BSEA has no jurisdiction or ability to address these "broad stroke tort and civil rights allegations or make determinations on the same" nor can a determination be made that the claims presented are IDEA-related.

For the reasons set forth below, the District's *Motion* is hereby **DENIED**.

**RELEVANT PROCEDURAL HISTORY:**

On February 26, 2021, Parent filed a Hearing Request in the above-referenced matter. Although the matter was originally granted accelerated status, following a conference call on March 22, 2021, the matter was removed from the accelerated calendar. It was also noted during that conference call that Parent failed to serve DESE, an intended party to the appeal. Hence, all Parties, including DESE, were served with a recalculated Notice of Hearing reflecting that the DESE was a named party, and that the matter was scheduled for Hearing on April 28, 2021.

On March 25, 2021, the District filed a *Motion to Remove Hearing Request from Accelerated Status, Partial Motion to Dismiss for Lack of Jurisdiction and/or Failure to State a Claim, and Motion to Challenge the Sufficiency on any Remaining Claim*. Because the matter was removed from the accelerated track on March 24, 2021, the District's *Motion to Remove Hearing Request from Accelerated Track* need not be addressed. On March 31, 2021, I denied the District's *Motion to Challenge the Sufficiency on any Remaining Claim*.

I address the *Partial Motion to Dismiss for Lack of Jurisdiction and/or Failure to State a Claim* below.

## RELEVANT FACTS:

For the purposes of this *Motion*, I must take the assertions set out in the Parent's Complaint as true.

Student is a 19 year old resident of Lawrence, MA. He attends Lawrence High School (LHS). On February 26, 2021, Parent filed a Hearing Request. In it she alleges that on June 5, 2020, Student and Parent moved to Lawrence, MA from Puerto Rico, where he was receiving special education and related services. Student's program in Puerto Rico did not provide him with a FAPE, and Parent participated in "administrative hearings with the Puerto Rico Department of Education." Upon arriving in Lawrence, MA, Parent was told by the District that because Student was 19 years old, he could not attend school. On August 24, 2020, Parent met with Mr. Victor Caraballo Anderson, Head of School, and describes that meeting in her hearing request as follows:

[The District] presented us with the same options they presented us in Puerto Rico insisting that he skip grades, and we let them know that [Student] wanted to continue studying in each grade in order to complete the credits until 12<sup>th</sup> grade and go to university given that because of the mistakes made by the education professionals in Puerto Rico the student had not received an appropriate education with adequate support and services and that's why he is in 10<sup>th</sup> grade and not at a university. I said that both the student and I want [Student] to continue studying in each grade until he reaches 12<sup>th</sup> grade because in spite of all his rights having been violated he is pushing himself first to be with students that aren't his age and second to obtain a very good grade, which despite his limitations and without timely services, since they took him out of the self-contained room where he was for nine years for no reason, he made honor roll two times.

Another meeting took place on August 26, 2020 with Parent, Student and Mr. James Parker, Zone 4 Special Education Director of the Lawrence Public Schools. At the meeting, Parent presented the District with Student's special education documents from Puerto Rico. She was provided the Procedural Safeguards, and Student was registered for school. The District informed Parent that they had contacted the Department of Education in Puerto Rico for Student's records and would be contacting Parent to develop the IEP. On or about that same time, Parent attempted to find legal representation to help her with the matter but was unsuccessful. She "decided to call for a mediation," but the matter was not resolved.

Parent asserted that Student is not receiving a FAPE and asked for the following relief:

- 1) "200,000 dollars for all of the mistreatment, abuse of power, discrimination, emotional damage, and mismanagement of the case";
- 2) that "the Department of Education take responsibility for offering [Student] a fair and appropriate education with all services in a timely manner and with all of the benefits that correspond to him";
- 3) that "the Department of Education take responsibility if for some reason or another the student is not able to complete the fourth year of high school

(12<sup>th</sup> grade) before 21 or 22 years of age, the Department of Education should be required to continue providing him his classes and studies with all of his special education services and assistance until he goes to or finishes 12<sup>th</sup> grade and goes to university”;

- 4) that “the Department of Education make up for the psychological, occupational therapy times that have not been offered to the student since he entered Lawrence High School, and order all of the types of evaluations that the student needs”;
- 5) that “the student be given a vocational evaluation and registered in the vocational rehabilitation program”;
- 6) that “the transfer of rights since they never explained what that was to me in Puerto Rico and they always put not applicable in the summary because in Puerto Rico the age of majority is 21 years old.”

## LEGAL STANDARD:

### 1. *Legal Standard for Motion to Dismiss.*

Hearing Officers are bound by the *BSEA Hearing Rules for Special Education Appeals* (Hearing Rules) and the Standard Rules of Adjudicatory Practice and Procedure, 801 C.M.R. 1.01. Pursuant to Rule XVII A and B of the *Hearing Rules* and 801 CMR 1.01(7)(g)(3), a hearing officer may allow a motion to dismiss if the party requesting the hearing fails to state a claim upon which relief can be granted. These rules are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As such, hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim.

To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”<sup>1</sup> 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>2</sup> These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”<sup>3</sup>

### 2. *Jurisdiction of the BSEA.*

#### a. *Subject Matter Jurisdiction.*

20 U.S.C. § 1415(b)(6) grants the Bureau of Special Education Appeals (BSEA) with jurisdiction over timely filed complaints by a parent/guardian or a school district “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.”<sup>4</sup> In Massachusetts, a parent or a school district, “may request mediation and/or a hearing at any time on any matter concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with

---

<sup>1</sup> *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

<sup>2</sup> *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995).

<sup>3</sup> *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted).

<sup>4</sup> See 34 C.F.R. §300.507(a)(1).

state and federal law, or procedural protections of state and federal law for students with disabilities.”<sup>5</sup>

The BSEA “can only grant relief that is authorized by these statutes and regulations, which generally encompasses orders for changed or additional services, specific placements, additional evaluations, reimbursement for services obtained privately by parents or compensatory services.”<sup>6</sup> The First Circuit Court of Appeals has concluded that where the underlying claim is related to FAPE, only the remedies available under the IDEA are available.<sup>7</sup> Monetary damages are limited to compensatory education and equitable remedies involving the payment of money for expenses paid by the parents for the educational and related needs of the student.<sup>8</sup> Hence, punitive damages are also unavailable as a remedy.<sup>9</sup>

Whether a claim is IDEA-based turns on whether the underlying claim is one of violation of the IDEA; a claim is not IDEA-based, and therefore not properly before the BSEA, where a student solely seeks money damages for tort like damages not subsumed in a federal claim, or "where there are no factual allegations to indicate that a dispute exists concerning the individual student's eligibility under the IDEA or Section 504 or the discharge of the School's procedural and substantive responsibilities under the IDEA or Section 504."<sup>10</sup>

#### *b. Exhaustion*

A party seeking judicial relief under the IDEA must first “exhaust” or complete all the administrative due process procedures set out in the statute before seeking relief in court.<sup>11</sup> The IDEA's exhaustion requirement ensures that the BSEA is able to develop a factual record and apply its "specialized knowledge" in an IDEA-based claim.<sup>12</sup>

Not every disability-based claim is subject to the IDEA's exhaustion requirement.<sup>13</sup> In *Fry v. Napoleon Community Schools*, 137 S.Ct. 743, 752 (2017), the U.S. Supreme Court held that "exhaustion is not necessary when the gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee - what the Act calls a 'free appropriate public education.'"<sup>14</sup>

According to the *Fry* Court, in determining whether the substance of the complaint concerns a

---

<sup>5</sup> 603 CMR 28.08(3)(a).

<sup>6</sup> *In Re: Georgetown Public School*, BSEA No. 1405352, 20 MSER 200 (Berman, 2014); *see also Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 126 (1st Cir. 2003) (the "IDEA's primary purpose is to ensure FAPE, not to serve as a tort-like mechanism for compensating personal injury").

<sup>7</sup> *See Diaz-Fonseca v. Commonwealth of Puerto Rico*, 451 F.3d 13, 19 (1st Cir. 2006) (holding that where the essence of a claim is a denial of FAPE, no greater remedies than those authorized by the IDEA may be awarded, regardless of how the claims are characterized (ADA, Rehabilitation Act, Section 1983, etc.)).

<sup>8</sup> *See id.*

<sup>9</sup> *See Nieves-Marquez*, 353 F.3d at 126.

<sup>10</sup> *In Re Xylia*, BSEA #12-0781, 18 MSER 373 (Byrne 2012); *see also Diaz-Fonseca*, 451 F.3d at 29; *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 59, 64 (1st Cir. 2002).

<sup>11</sup> 20 U.S.C. 1415 (l); 34 CFR 300.516(e).

<sup>12</sup> *See Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 59, 64 (1st Cir. 2002).

<sup>13</sup> *See Fry v. Napoleon Community Schools*, 137 S.Ct. 743 (2017).

<sup>14</sup> *Id.*

denial of FAPE or instead addresses disability-based discrimination, two questions shed light on the matter: (1) could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school, such as a public theater or library? (2) could an adult at the school, such as an employee or visitor, have pressed essentially the same grievance? If the answer is yes, then exhaustion of administrative remedies is not required.<sup>15</sup> And, if the answer is no, exhaustion of administrative remedies available under the IDEA may thus be required in some cases, even where the relief sought by the petitioner is not within the BSEA's authority to grant, when a petitioner's claims are "IDEA-based".<sup>16</sup>

Prior to *Fry*, BSEA decisions developed and implemented a three-prong inquiry to evaluate whether claims involving statutes other than the IDEA, Section 504, and M.G.L. c. 71B, may properly be entertained by the BSEA.<sup>17</sup> Specifically, when determining the viability of such claims at the BSEA, the hearing officer must consider: (1) is the event giving rise to the student's claim "related" to the student's status as a student with disabilities or to the discharge of the school's obligations under the IDEA, Section 504 and/or MGL c. 71B?; (2) is the relief the student is seeking available in a claim rooted in the IDEA, Section 504 and/or MGL c. 71B?; and (3) does this administrative due process agency have a particular expertise in assessing and determining the factual basis of the student's claim so as to develop a useful administrative record for a judicial review?<sup>18</sup>

Although *Fry* does not explicitly address whether exhaustion is required if a plaintiff asserts a denial of FAPE but seeks monetary damages or other relief that is not available under the IDEA, courts have generally found that if the party requesting an order from the BSEA or a court is seeking solely the type of relief the BSEA lacks the authority to award (i.e., money damages), then exhaustion of administrative procedures is not required.<sup>19</sup> However, a party making a disability-based claim under an unrelated statute must also exhaust the IDEA's administrative due process procedures if they seek the type of relief that is available under the IDEA, e.g., an award of compensatory education.<sup>20</sup> In contrast, where no connection exists between the IDEA and the injuries suffered, courts have allowed a party to bypass a state due process hearing and proceed directly to a court.<sup>21</sup>

#### **APPLICATION OF LEGAL STANDARD:**

---

<sup>15</sup> See *id.*

<sup>16</sup> See *Frazier*, 276 F.3d at 59, 64; *Bowden v. Dever*, No. 00-12308-DPW, 202 WL 472293 [8 MSER 90] (D.Mass. March 20, 2002); *CBDE v. Massachusetts BSEA*, No.11-10874- DPW, WL 4482296 (D.Mass Sept. 27, 2012).

<sup>17</sup> *Springfield Public Schools and Xylia*, 18 MSER 373 (2012).

<sup>18</sup> See *id.*

<sup>19</sup> See *Diaz-Fonseca*, 451 F.3d at 19; *Nieves -Marquez*, 353 F.3d at 126 (1<sup>st</sup> Cir. 2003); *Bowden v. Bowden*, 2002 WL 472293 @\*5 (D. Mass. 2002); see also *In Re Xylia*, BSEA #12-0781, 18 MSER 373, 376 (Byrne, 2012) ("[e]xhaustion of the IDEA's administrative process is not required when the student is seeking solely money damages for tort like injuries not subsumed in a federal statutory claim . . . [n]or . . . where there are no factual allegations to indicate that a dispute exists concerning the individual student's eligibility under the IDEA or Section 504 or the discharge of the School's procedural and substantive responsibilities under the IDEA or Section 504").

<sup>20</sup> *In Re: DESE and XiLi*, BSEA #1802999, 24 MSER 14 (Byrne, 2018).

<sup>21</sup> See *Chambers v. Cincinnati Sch. Bd.*, 63 IDELR 93 (S.D. Ohio 2014) (finding that because no connection existed between the IDEA and the injuries a high schooler with disabilities suffered in an alleged sexual assault the parent's failure to exhaust her administrative remedies when pursuing a negligence claim against the district was excused).

In evaluating the District's *Partial Motion to Dismiss for Lack of Jurisdiction and/or Failure to State a Claim* under the legal standard set forth above, I take the Parent's allegations as true as well as any inferences that may be drawn from them in her favor, and deny dismissal if these allegations plausibly suggest an entitlement to relief.<sup>22</sup>

Taking Parent's allegations as true, I find that I cannot dismiss Parent's claims. Parent presents a host of factual allegations that point to the existence of a dispute concerning Student's rights under the IDEA and the discharge of the District's procedural and substantive responsibilities under the IDEA.<sup>23</sup> Specifically, Parent asserts that the District failed to evaluate Student, implement the services in his IEP, and develop an appropriate IEP. She alleges procedural violations as well, including but not limited to the "timely" delivery of services and the opportunity to sign the Age of Majority Forms.

In applying *Frye*, it is clear that the matter arose in the context of Student's status as a student with a disability and his entitlement to a FAPE from the District.<sup>24</sup> A non-student could not bring these claims outside the school setting nor could an adult bring these claims in the school setting. All of Parent's claims are within the BSEA's jurisdiction and involve FAPE-related concerns. Although the BSEA cannot grant the relief of monetary damages, the BSEA may grant the other forms of relief sought by Parent, including, but not limited, to compensatory services and the ordering of evaluations. Parent's claims require exhaustion, as they are clearly IDEA related. Hence, regardless of Parent's request for monetary damages, her claims may not be dismissed for lack of jurisdiction.<sup>25</sup>

Construing Parent's allegations broadly and in the light most favorable to the Parent, I find that all claims implicating the IDEA and M.G.L. c. 71B as they relate to a FAPE are not subject to dismissal. Because Parent's claim for monetary damages was based on the same set of alleged facts that gave rise to her claim for compensatory services, Parent would have to exhaust administrative remedies at the BSEA before proceeding to state or federal court with her additional monetary damages claims.

#### **ORDER:**

1. As set forth above, the District's *Motion to Dismiss* is **DENIED**.
2. A Pre-Hearing Conference will be scheduled to allow the Parties an opportunity to discuss and narrow the issues for Hearing.

---

<sup>22</sup> See *Iannocchino*, 451 Mass. at 636.

<sup>23</sup> See also *In Re Xylia*, BSEA #12-0781, 18 MSER 373, 376 (Byrne, 2012).

<sup>24</sup> *Fry*, 137 S.Ct. at 758.

<sup>25</sup> See *Frazier*, 276 F.3d at 63 (addressing arguments that the IDEA's exhaustion requirement did not apply to a lawsuit seeking money damages pursuant to 42 U.S.C. § 1983 for a school district's alleged frustration of a student's right to a FAPE, the U.S. Circuit Court of Appeals for the First Circuit concluded that "plaintiffs who bring an IDEA-based claim . . . in which they seek only money damages, must exhaust the administrative process available under the IDEA").

By the Hearing Officer,

s/ Alina Kantor Nir

Alina Kantor Nir

Date: April 1, 2021