

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

In Re: Pembroke Public Schools v. Student

BSEA # 2108690

**RULING ON PARENT'S MOTION TO CHALLENGE THE SUFFICIENCY OF THE
DISTRICT'S DUE PROCESS COMPLAINT**

This matter comes before the Hearing Officer on the Parent's *Motion to Challenge the Sufficiency of the District's Due Process Complaint (Motion)* which was filed with the BSEA on April 22, 2021. As grounds thereof, Parent argues that a due process complaint must assert a violation pursuant to 34 CFR 300.507, and that since the District's Hearing Request fails to cite a violation, it is insufficient and must be dismissed.

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

RELEVANT PROCEDURAL HISTORY:

On April 6, 2021, Pembroke Public Schools (District) filed a Hearing Request asserting that Parent has fully rejected the IEP proposed by the District for the period from January 19, 2021 to January 18, 2022 (IEP), while accepting Student's placement at Evergreen Center School in Milford, Massachusetts. As such, the District sought substitute consent to implement the IEP and for a determination that the proposed IEP is reasonably calculated to provide Student with a FAPE.

On April 16, 2021, Parent filed a *Response to the District's Due Process Complaint and Motion to Dismiss*. In it, Parent alleged that the District could not seek substitute consent to implement Student's IEP and that the District had failed to cite a violation of IDEA in its complaint.

On April 20, 2021,, the District filed its *Opposition to Parent's Motion to Dismiss*, asserting that that Parent's *Motion to Dismiss* contained jurisdictional arguments and claims that fall outside the scope of Pembroke's Hearing Request; that Pembroke sought to ensure that Student continues to receive a FAPE as the last proposed IEP for the period January 19, 2021 to January 18, 2022 was rejected by Parent on March 17, 2021; that if Parent were to succeed in obtaining a dismissal of the Hearing Request, Pembroke would have no venue to file its claim; and, that to avoid debate over the term "substitute consent" contained in the Hearing Request, the District clarified its position and prayer for relief as follows: the last proposed IEP offered to Student is designed to afford Student with FAPE.

On April 22, 2021, the Hearing Officer issued a Ruling dismissing the District's request for substitute consent to implement the IEP but allowing the District to proceed to Hearing on its claim that the proposed IEP is reasonably calculated to provide Student with a FAPE.

RELEVANT FACTS:

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

1. Student is a Pembroke resident with special needs under the disability categories of autism and intellectual disability.
2. Student currently attends Evergreen Center School in Milford, Massachusetts (Evergreen).
3. Parent is Student's legal guardian.
4. In January 2021, the District proposed an IEP for the period from January 19, 2021 to January 18, 2022 with placement at Evergreen.
5. On March 17, 2021, Parent fully rejected the IEP while accepting Student's placement at Evergreen.
6. Student is currently receiving services pursuant to a stay-put IEP.
7. On April 6, 2021, the District filed a Hearing Request seeking substitute consent to implement the IEP and for a determination that the proposed IEP is reasonably calculated to provide Student with a FAPE.

LEGAL STANDARD:

Pursuant to Rule IE of the BSEA *Hearing Rules for Special Education Appeals* (hereinafter "Hearing Rules"), "[i]f the hearing request does not contain the elements set out in Rule 1B, [the non-moving] party may file a written challenge to the sufficiency of the hearing request with the Hearing Officer and the other party(ies) within fifteen (15) calendar days of receipt of the hearing request." Rule I B of the *Hearing Rules*, which tracks the Individuals with Disabilities Education Act, § 615(b)(7)(A), 20 USCA § 1415(b)(7)A(ii), 34 CFR § 300.508(b), sets forth the required content of a hearing request as follows:

1. Name and address of student;
2. Name, address, and telephone number of:
 - (a) Person requesting hearing;
 - (b) Parent(s);
 - (c) Legal Guardian, if any;
 - (d) Individual given court-appointed educational decision-making authority, if any;
 - (e) Duly appointed educational surrogate parent, if any; and
 - (f) Individual with whom the child lives and who is acting in the place of the parent;

3. Relationship to student of person requesting hearing;
4. Name of programmatically and fiscally responsible school district(s) and/or name of state educational agency or other state agency(ies);
5. Name of the school the child is attending;
6. In the case of a homeless child or youth within the meaning of the McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available contact information for the child and the name of the school the child is attending;
7. If applicable, the name, address, phone number, and fax number of the attorney or advocate representing the party who is requesting a hearing;
8. The nature of the disagreement, including facts relating to such disagreement;
9. A proposed resolution of the disagreement to the extent known and available to the party at the time.

As with the Federal Rules of Civil Procedure, the purpose of the pleading rules under the IDEA is to provide fair notice to the opposing party. The United States Supreme Court has explained:

The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is a “short and plain statement of the claim” that will give the defendant fair notice of what the plaintiff claim is and the grounds upon which it rests.

Leatherman v. Tarrant County NICU, 507 U.S. 163, 168 (1993).

APPLICATION OF LEGAL STANDARD:

Here, as in the *Motion to Dismiss* filed on April 16, 2021, Parent argues that a due process complaint must assert a violation pursuant to 34 CFR 300.507, and that since the District’s Hearing Request fails to cite a violation, it is insufficient and must be dismissed.

Parent’s argument here is misplaced. Whether a *legally* sufficient basis¹ for a claim is articulated in a hearing request is not the standard to be applied by a hearing officer pursuant to the sufficiency challenge provision of the IDEA and BSEA Hearing Rules. Rather, as set forth above, the inquiry when addressing a sufficiency challenge is guided by the requirements of Section 615(b)(7)(A) of the IDEA 2004 and Hearing Rule IB.

After careful review of the Hearing Request and Parent’s allegations of insufficiency, I find that the Hearing Request is sufficient as it satisfies said requirements. Specifically, the District’s Hearing Request includes all of the elements outlined in Rule IB, including but not limited to the nature of the disagreement, including facts relating to such disagreement, and a proposed resolution of the disagreement

ORDER

¹ I note that the issue of whether a violation of IDEA must be asserted in a complaint filed by a school district was addressed in the Ruling issued on April 22, 2021 and will not be addressed herein.

For the reasons discussed, Parent's *Motion* challenging the sufficiency of the District's Hearing Request is hereby **DENIED**.

By the Hearing Officer:

/s/ Alina Kantor Nir

Alina Kantor Nir
Dated: April 26, 2021