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

In Re: Springfield School District **BSEA # 1404388**

RULING ON PARTIAL MOTION TO DISMISS

The Springfield School District (Springfield) filed a hearing request with the BSEA. Student filed a response that included counterclaims under the Americans with Disabilities Act (ADA). Springfield has now filed a Partial Motion to Dismiss, seeking to dismiss all of Student's counterclaims under the ADA. It is not disputed that Springfield falls under the mandates of the ADA, but Springfield takes the position that the Bureau of Special Education Appeals (BSEA) lacks the authority to resolve ADA claims. Student disagrees and filed an opposition. A telephonic motion hearing was held on February 19, 2014.[1]

BSEA Hearing Rules and the Massachusetts Executive Office of Administration and Finance Adjudicatory Rules of Practice and Procedure both provide that a Hearing Officer may allow a motion to dismiss if the moving party fails to state a claim upon which relief may be granted.[2]

Similarly under the federal rules, "to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."[3] A motion to dismiss may be allowed if the court finds "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[4]

Therefore, dismissal is inappropriate unless Student, as the non-moving party, can prove no set of facts in support of her claims. The Hearing Officer must consider Student's claims based upon any theory of law and must consider the allegations in the hearing request to be true, as well as all reasonable inferences in the Student's favor.[5]

---

[1] Springfield is represented by attorneys Regina Williams Tate and Tami Fay. Student is represented by attorneys Samuel Miller, Deborah Dorfman and Robert Fleischner. During an initial conference call, I disclosed my previous professional relationships with attorneys Fay and Fleischner.
[2] BSEA Rule 17B; 801 CMR 1.01(7)(g)3.
[3] *Ashcroft v. Iqbal*, 556 U.S. 662, 678-679 (2009).
[4] *Judge v. City of Lowell*, 160 F.3d 67, 72 (1st Cir. 1998) (quoting *Conley v.Gibson*, 355 U.S. 41, 45-46 (1957)).
[5] See *Caleron-Ortiz v. LaBoy-Alvarado*, 300 F.3d 60 (1st Cir. 2002) ("accepting as true all well-pleaded factual averments and indulging all reasonable inferences in the plaintiff's favor" a motion to dismiss will be denied if recovery can be justified under any applicable legal theory). See also *Whitinsville Plaza, Inc. v. Kotseas*, 378 Mass. 85, 89 (1979); *Nader v. Citron*, 372 Mass. 96, 98 (1977).

The portion of the ADA at issue in the instant dispute is Title II, which prohibits discrimination against persons with disabilities by public entities.[6] Title II "is modeled on § 504 of the Rehabilitation Act" but extends the reach of § 504 to state and local governmental entities that do not receive federal financial assistance.[7] Because of the similarity of these statutes, in applying Title II of the ADA, the First Circuit "rel[ies] interchangeably on decisional law applying § 504."[8]

As pointed out in Student's opposition, notwithstanding these similarities, there may be important differences between Section 504 and Title II of the ADA.

Both the IDEA and Section 504 include a FAPE requirement. "FAPE under the IDEA and FAPE as defined in the Section 504 regulations are similar but not identical."[9] Federal Section 504 regulations provide that implementing an IEP that provides a FAPE under the IDEA is sufficient, but not necessary, to satisfy the FAPE requirements of Section 504.[10]

The ADA includes no FAPE requirement. Student points out correctly that an ADA complaint (as compared to a Section 504 complaint) may arguably not be dismissed solely on the basis of a finding that Springfield has proposed an IEP that is reasonably calculated to provide FAPE.

Equally important, Student's counterclaims include a number of allegations under the ADA that have no counterpart under Section 504 regulations applicable to Springfield. For example, Student takes the position that the ADA requires Springfield to engage in an interactive process with Student's mother in an attempt to reach an agreement on an accommodation or modification to Springfield's policies, practices, programs and activities, and Student alleges that Springfield failed to do so.[11]

Similar to federal courts, the jurisdiction of the BSEA is limited in that BSEA Hearing Officers possess only that power expressly granted—for example, by regulation or statute.[12] There may be exceptions to this rule—for example, when a claim is inextricably intertwined with a student's special education rights such as when a contract between the parties changes the special education responsibilities of a school district. But, ultimately,

---

[6] 42 U.S.C 12132.

[7] *Parker v. Universidad de Puerto Rico*, 225 F.3d 1, 4 (1st Cir. 2000).

[8] *Id*. See also *Katz v. City Metal Co*., 87 F.3d 26, 31 n.4 (1st Cir. 1996) (noting that Section 504 of the Rehabilitation Act "is interpreted substantially identically to the ADA.").

[9] *Mark H. v. Lemahieu*, 513 F.3d 922, 933 (9th Cir.2008). See also *Kimble v. Douglas County School Dist. RE-1*, 2013 WL 659109, *4 -5 (D.Colo. 2013) (discussing cases).

[10] See 34 C.F.R. § 104.33(b)(2) ("Implementation of an [IEP] developed in accordance with the [IDEA] is one means of meeting" the substantive portion of the Section 504 FAPE requirement).

[11] See also *K.M. ex rel. Bright v. Tustin Unified School Dist*., 725 F.3d 1088, 1099 (9th Cir. 2013) ("the connection between Title II and Section 504 is nuanced. Although the general anti-discrimination mandates in the two statutes are worded similarly, there are material differences between the statutes as a whole"); *CG v. Pennsylvania Dept. of Educ*., 734 F.3d 229, 235-36 (3rd Cir. 2013) (discussing differences between Title II and Section 504).

[12] See *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 373, 378 (1994).

BSEA jurisdiction must be grounded within the regulations and statute that describe its role and responsibilities.

BSEA's general grant authority is found within the federal special education law (the Individuals with Disabilities Education Act or IDEA), which provides that a BSEA Hearing Officer has jurisdiction with respect to a "complaint . . . 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".[13] On the basis of this authority (and related state statute and regulations), the BSEA resolves special education disputes between parents/students and their school districts.

State special education regulations have extended this jurisdiction to include a parent's (and student's) claims regarding "any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973, as set forth in 34 CFR §§104.31-104.39." [14]

The BSEA's jurisdiction does not explicitly extend to the ADA. As noted above, Section 504 and the ADA are sufficiently different so that one may not simply impute jurisdiction of the ADA on the basis of the BSEA's jurisdiction over Section 504, and one may not simply address Student's Section 504 rights and, without further analysis, resolve any and all claims under the ADA. In other words, despite the similarities of judicial decisions interpreting these statutes as noted by the First Circuit, Section 504 and the ADA are two separate and distinct statutes. Also, Student's rights under the IDEA and Section 504 are not sufficiently intertwined with Student's rights under the ADA, so that I must determine Student's rights under the ADA in order to resolve Student's special education claims or Student's claims under Section 504. All of this supports dismissal of Student's ADA claims as beyond the jurisdictional authority of the BSEA.

Student argues to the contrary. Recognizing the lack of explicit jurisdictional authority over ADA claims, Student takes the position that because the BSEA's authority under the IDEA (quoted above) includes consideration of any matter relating to Student's "educational placement", the BSEA would have authority to consider Student's claim that her current placement is unduly restrictive and violates the integration mandate of the ADA. But, this argument goes too far. Student's argument, if accepted, would grant jurisdiction to the BSEA to consider literally any claim (even those completely unrelated to Student's special education rights) that may be relevant to Student's educational placement—for example, a claim of gender discrimination or a claim of a building code violation. I am aware of no judicial or administrative decision that would support the argument that simply because Student's educational placement allegedly violates the ADA, the BSEA has jusrisdictional authority to consider that claim.

[13] 20 USC 1415(b)(6)(A).
[14] 20 USC § 1415(b)(6); 603 CMR 28.08(3); 603 CMR 28.10(9).

Alternatively, Student argues that even if a BSEA Hearing Officer does not have the jurisdictional authority to rule on her ADA claims, an evidentiary hearing must encompass separate fact-finding on the alleged ADA violations. In support of this proposition, Student relies on *Frazier v. Fairhaven School Committee,* 276 F. 3d 52, 60-62 (1st Cir. 2002) and subsequent federal District Court decisions in Massachusetts interpreting *Frazier*.

In *Frazier v. Fairhaven School Committee*, the First Circuit held "that a plaintiff who alleges that local educational officials have flouted her right to a free and appropriate public education may not bring suit for money damages under 42 U.S.C. § 1983 without first exhausting the administrative process established by the Individuals with Disabilities Education Act (IDEA)."[15] The Court explained that exhaustion "makes sense because [it] enables the [educational] agency to develop a factual record, to apply its expertise to the problem, to exercise its discretion, and to correct its own mistakes, and is credited with promoting accuracy, efficiency, agency autonomy, and judicial economy.[16]

Focusing on this language that explains why exhaustion "makes sense", Student seeks to read *Frazier* for the proposition that fact-finding is required whenever the BSEA has expertise regarding the subject matter of the claim, regardless of the statutory basis of that claim. Thus, the argument goes, Student's ADA claim includes alleged violations of least restrictive alternative principles found within the IDEA and Section 504, and the BSEA has expertise regarding these principles. Therefore, the BSEA should, according to Student, assert jurisdiction for purposes of exhaustion and fact-finding under *Frazier*.

Frazier and its progeny are exhaustion cases. They explain when the BSEA's IDEA administrative procedures must be utilized prior to a party going to court. The cases have concluded that even though the BSEA may not be able to award the requested relief—for example, monetary damages—exhaustion may nevertheless be necessary so that administrative fact-finding may occur.

Student is correct that *Frazier* may result in exhaustion (and therefore fact-finding) beyond a student's claims under the IDEA. For example, the district and appellate courts in *Frazier* dismissed on exhaustion grounds the student's 42 USC § 1983 and Section 504 claims. But, exhaustion of IDEA administrative proceedings was required in *Frazier* only because those claims "are ... rooted in an alleged violation of the IDEA".[17] The BSEA's administrative expertise provides a rationale supporting the general purposes of exhaustion; but I am aware of no judicial authority supporting the proposition that this expertise, by itself, is sufficient to require exhaustion of BSEA fact-finding proceedings.

I also do not accept the premise of Student's argument, which is that the BSEA has expertise regarding all of the alleged violations contained within Student's ADA claims. No doubt, some of Student's alleged ADA violations are quite similar to her claims under the IDEA

---

[15] *Frazier v. Fairhaven School Committee,* 276 F.3d 52, 56 (1st Cir. 2002).
[16] *Id*. at 61 (internal footnotes and citations omitted).
[17] *Frazier v. Fairhaven School Committee,* 122 F.Supp.2d 104, 111 (D.Mass. 2000), *aff'd,* 276 F.3d at 64.

and Section 504, and for this purpose the BSEA fact-finding under the IDEA and Section 504 may provide guidance to the courts when considering Student's ADA claims. But, once one enters into the details of the ADA procedural requirements, the fact-finding would likely go beyond the experience and expertise of a special education hearing officer, thereby providing little guidance to the federal courts. For example, Student has alleged that the ADA requires Springfield to engage in an interactive process with Student's mother in an attempt to reach an agreement on an accommodation or modification to Springfield's policies, practices, programs and activities, and Student alleges that Springfield failed to do so. There are no comparable procedural requirements under the IDEA or Section 504.

Finally, I note that I have previously concluded that the responsibility of a BSEA hearing officer under *Frazier* is to find facts only under those statutes that the BSEA has jurisdiction to consider when resolving the merits of a special education dispute. This results in fact-finding under *Frazier* that is comparable to fact-finding that a BSEA hearing officer would conduct in a compensatory education claim under the IDEA, state special education laws and Section 504, and ensures that BSEA fact-finding remains squarely within its areas of expertise.[18]

I therefore find that *Frazier* and its progeny do not require the BSEA to consider Student's ADA claims even if these claims had been made within the context of seeking monetary damages.

For these reasons, I conclude that the BSEA does not have jurisdiction over Student's ADA claims. Accordingly, Springfield's Partial Motion to Dismiss is **ALLOWED**.

By the Hearing Officer,

____

William Crane
Date: February 26, 2014

[18] *In Re: CBDE Public Schools*, BSEA # 10-6854, 17 MSER 43 (2/24/11), *aff'd sub. nom*. *CBDE Public Schools v. Massachusetts Bureau of Special Educ. Appeals*, 2012 WL 4482296 (D.Mass. 2012) ("I understand fact finding regarding educational harm to Student to be comparable to the fact finding that would occur if this were a compensatory education dispute").