

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

In re: Beatrice and Charlie¹

BSEA #1502412

BSEA #1502413

RULING ON SCHOOL DISTRICT'S MOTION TO DISMISS

This matter comes before the Hearing Officer on the Motion of the Winthrop Public Schools (hereinafter "the District") to Dismiss the Hearing Request filed by the Parent. The Motion to Dismiss was filed on October 20, 2014. The Parents filed an Opposition to the Motion on October 27, 2014. The Hearing Officer took additional arguments during a telephonic motion session held on November 13, 2014. For the reasons set forth below, the District's Motion to Dismiss is hereby GRANTED.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On September 19, 2014, the Parent of Beatrice and the Parent of Charlie filed two separate Hearing Requests with the Bureau of Special Education Appeals ("BSEA") against the Winthrop Public Schools alleging that their children had suffered at school due to the District's negligent and intentional actions and inactions with regard to a teacher at the Arthur T. Cummings School who allegedly abused, neglected, and assaulted Beatrice and Charlie. Beatrice was described as having been diagnosed with Autism Spectrum Disorder, anxiety and seizure disorder. Charlie was described as having been diagnosed with Autism Spectrum Disorder. In each Hearing Request, Parents requested that the matters be assigned to the same hearing officer and joined to the other.²

The Hearing Requests filed by Beatrice's and Charlie's parents both sought "an order finding them entitled to recover damages for violation of [their child]'s due process rights and 42 U.S.C. § 1983, 42 U.S.C. §§ 12131-12165, Title IX, 20 U.S.C. § 1681, the Massachusetts Civil Rights Act, Mass. Gen. L. c. 12 § 11(I), and for Winthrop's negligence, and loss of consortium based on Winthrop's knowing and willful failure to take adequate steps to ensure [the child]'s safety stemming from the assaults." Separate hearings and different hearing officers were initially assigned to the matters.

On October 1, 2014, the parties filed a joint request that the initial hearing date be postponed and that the District be allowed additional time to file its Response to the Hearing Request. Also on October 1, 2014, the District indicated in writing that it did not object to

¹ "Beatrice" and "Charlie" are pseudonyms chosen by the Hearing Officer to protect the privacy of the Students in documents available to the public.

² Both Beatrice and Charlie are represented by the same attorney.

Parents' Motion to Consolidate the two cases. On October 2, 2014, the first two requests were allowed by Hearing Officer Amy Reichbach in the case involving Beatrice. On October 22, 2014 the cases were consolidated and on October 29, 2014, the case involving Charlie was reassigned to Hearing Officer Reichbach.

As discussed above, the District filed a Motion to Dismiss,³ which the Parents opposed. This ruling follows a telephonic motion session during which the parties, through their attorneys, were given the opportunity to supplement their Motion and Opposition, respectively.

DISCUSSION

A. 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.”⁴ 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.”⁵ 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). . .”⁶

The basis of the District’s Motion to Dismiss is that Beatrice and Charlie have made no claims relative to the denial of a free, appropriate, public education and that the sole basis of both hearing requests is a common law torts claim for which they seek damages. As such, the District argues, the BSEA lacks jurisdiction over the matter.

The Parents’ Opposition to the Motion states that the BSEA must retain jurisdiction and make findings regarding the Parents’ claims because the First Circuit requires that they exhaust administrative remedies for Individuals with Disabilities Education Act (“IDEA”)-related claims prior to filing in federal court.

³ Although the District filed two separate Motions and the Parents filed two separate Oppositions because the cases had not yet been consolidated, the substance of each set of documents was the same and they will therefore be treated as though one Motion and one Opposition were filed in a consolidated case.

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

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

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

The issue before the BSEA, therefore, is whether Beatrice and Charlie, who are seeking monetary damages as compensation for “significant emotional injuries”⁷ and “physical and severe emotional injuries,”⁸ respectively, stemming from abuse and neglect by Winthrop school personnel, must exhaust the administrative dispute resolution procedures available to them under the IDEA, even though they explicitly state that they make “no claims pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; M.G.L. ch. 71B; or any of the regulations promulgated thereunder,” nor are they “seeking, through this action, any special education services from Winthrop.”⁹

B. Exhaustion

Among other things the IDEA, 20 U.S.C. § 1400 *et seq.*, provides parents with a formal complaint process 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.” 20 U.S.C. § 1415(b)(6). In Massachusetts, the BSEA is the administrative agency before which any impartial due process hearing regarding these issues takes place. 603 CMR 28.08. A party aggrieved by the result of the BSEA’s administrative process may file an appeal in state or federal court, but may not do so unless and until that party has exhausted all administrative procedures under the IDEA. 20 U.S.C. § 1415(l).¹⁰

As a preliminary matter, the BSEA is not deprived of jurisdiction by the fact that the claim is not based directly upon violations of the IDEA, nor by the fact that the relief the plaintiffs seek cannot be awarded by the agency. *See Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 59, 64 (1st Cir. 2002). These questions were resolved by the First Circuit more than a decade ago in a case involving, *inter alia*, a claim under 42 U.S.C. § 1983 that a school district had frustrated a student’s right to a free and appropriate public education and was, therefore, liable for money damages. *Id.* at 57. Faced with arguments that the IDEA’s exhaustion requirement¹¹ did not apply because the lawsuit had been brought pursuant to a statute other than the IDEA and

⁷ Beatrice’s Hearing Request p. 2.

⁸ Charlie’s Hearing Request p. 1.

⁹ Parents’ Opposition to District’s Motion to Dismiss, p. 2.

¹⁰ 20 U.S.C. § 1415(l) provides: “Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. § 12101 *et seq.*], title V of the Rehabilitation Act of 1973 [29 U.S.C. § 79.0 *et seq.*], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.” Subsections (f) and (g) refer to the administrative due process system required under the Individuals with Disabilities Education Act (“IDEA”).

¹¹ As the United States Supreme Court has recognized, the IDEA’s exhaustion requirement is not absolute, and parties “may bypass the administrative process where exhaustion would be futile or inadequate.” *Honig v. Doe*, 484 U.S. 205, 327 (1988). The IDEA’s exhaustion requirement, however, “remains the general rule, and a party who seeks to invoke an exemption bears the burden of showing that it applies.” *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 59 (1st Cir. 2002). In this case, the parties argue not about whether exhaustion would be futile, but whether it applies at all.

because the relief sought, money damages, was not available under the IDEA, the First Circuit held otherwise, concluding that “plaintiffs who bring an IDEA-based claim . . . in which they seek only money damages, must exhaust the administrative process available under the IDEA.” *Id.* at 64.

In so holding, the Court discussed the rationale behind the exhaustion requirement. First, exhaustion “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.” *Frazier*, 276 F.3d at 60 (quoting *Christopher W. v. Portsmouth Sch. Comm.*, 877 F.2d 1089, 1094 (1st Cir. 1989), internal quotation marks omitted). The Court referred to the agency’s “specialized knowledge,” which, pursuant to the “IDEA’s administrative machinery,” it would be in a position to apply to the “initial evaluation of whether a disabled student is receiving a free, appropriate public education” in an IDEA-based claim. *Id.* Moreover “these administrative procedures also ensure that educational agencies will have an opportunity to correct shortcomings in a disabled student’s individualized education program.” *Id.* at 60-61.

C. Analysis

Based on *Frazier* and its progeny, whether the BSEA must hold a hearing at which a hearing officer develops a factual record and applies her expertise to the issues before her in order to enable the plaintiffs to exhaust their claims before proceeding to court turns on whether the plaintiffs’ claims are “IDEA-based.”¹² Those claims that the First Circuit has recognized as “IDEA-based” are generally those in which the plaintiff brings an action under 42 U.S.C. § 1983, asserting a violation of the IDEA. *See, e.g., Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 29 (2006) (holding that exhaustion applied in a case “where the underlying claim is one of violation of the IDEA”); *Frazier*, 276 F.3d at 64. In *In Re: Xylia*, Hearing Officer Lindsay Byrne reviewed these and several unpublished cases, concluding that “[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.”¹³

¹² The IDEA’s exhaustion requirement is not limited to IDEA claims, as it “applies even when the suit is brought pursuant to a different statute so long as the party is seeking relief that is available under subchapter II of IDEA.” *Rose v. Yeaw*, 214 F.3d 206, 210 (1st Cir. 2000). *See* Note 10, *supra*, and accompanying text. In the instant case, the plaintiffs do not seek any relief available under the IDEA, nor does either party claim they do. This ruling, therefore, focuses on whether the plaintiffs’ claims are “IDEA-based.”

¹³ *In Re: Xylia*, BSEA #12-0781, 18 MSER 373, 376 (Nov. 26, 2012).

In the instant case, Beatrice and Charlie seek money damages pursuant to several statutes, none of which includes the IDEA or Section 504 of the Rehabilitation Act.¹⁴ They do not argue that the District has violated the IDEA's guarantee of a free, appropriate public education (FAPE), or that their claim for money damages is causally connected to their status as students with disabilities. They do not claim that the District's alleged knowing and willful failure to take adequate steps to ensure their safety somehow creates a dispute pursuant to the IDEA or Section 504; in fact they state explicitly that they make no claims pursuant to these Acts, and that they do not seek any special education services from the District in this action. As in *In Re: Xylia*, here the "plaintiffs do not offer a plausible set of facts that could be fairly construed as a special education claim even if not identified as such in the pleadings."¹⁵ The fact that Beatrice and Charlie are both eligible for, and receiving, special education and related services, does not automatically transform the claims they are making into "IDEA-based" claims.

As the First Circuit has recognized, for "IDEA-based" claims the BSEA's administrative process is useful, as it "enables the agency to develop a factual record [and] to apply its expertise to the problem." *Frazier*, 276 F.3d at 60. In the instant case, the facts to be presented to the tribunal are not those in which special education hearing officers have any special expertise. Beatrice and Charlie are not asking for findings regarding the appropriateness of the services Winthrop is providing to them or the District's failure to provide them with FAPE. They are not asking for reimbursement for special education or related services, nor are they seeking an award of compensatory education for services they should have received but did not. Rather Beatrice and Charlie seek to prove that Winthrop supervised its employee negligently and that as a result they were harmed. As in *In Re Xylia*, the "facts alleged cannot be logically connected to any denial of FAPE," and "a reviewing court could not rely on the expertise or experience of an administrative hearing officer in this matter."¹⁶ As such, requiring that the matter be adjudicated fully by the BSEA before the plaintiffs may proceed to court will impede, rather than promote, several of the goals of the exhaustion requirement: "efficiency, agency autonomy, and judicial economy." *Frazier*, 276 F.3d at 60.

CONCLUSION

Upon consideration of the facts alleged in the *Hearing Request* and the arguments made by the parties, I find that Beatrice and Charlie's claims for relief are not "IDEA-based." As such they need not exhaust the administrative remedies available to them as students with disabilities under the IDEA before proceeding to court. Dismissal is therefore appropriate.

¹⁴ Specifically, Beatrice and Charlie seek money damages pursuant to 42 U.S.C. § 1983, 42 U.S.C. §§ 12131-12165, Title IX, 20 U.S.C. § 1681, the Massachusetts Civil Rights Act, Mass. Gen. L. c. 12 § 11(I), and for Winthrop's negligence, and loss of consortium.

¹⁵ 18 MSER 373, 377.

¹⁶ 18 MSER 373, 377 ("Factual findings centered on the Student's IDEA experience would not provide useful information to a court considering an award of damages due to negligence").

ORDER

As there are no IDEA-based issues before the BSEA, Winthrop Public Schools' Motion to Dismiss is GRANTED.

By the Hearing Officer:

Amy M. Reichbach
Dated: November 24, 2014