

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

In re: Gabrielle¹

BSEA #1505232

RULING ON CLINTON PUBLIC SCHOOLS' MOTION TO DISMISS

This matter comes before the Hearing Officer on the Motion of the Clinton Public Schools (hereinafter "Clinton" or "the District") to Dismiss the Hearing Request filed by the Grandparents/Caregivers (hereinafter "the Grandparents") on behalf of the Student.² The Motion to Dismiss was filed on March 13, 2015. The Grandparents/Caregivers filed their Opposition to the District's Motion to Dismiss on March 20, 2015. 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, Clinton's Motion to Dismiss is hereby DENIED.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On January 20, 2015 the Grandparents of Gabrielle filed a Hearing Request with the Bureau of Special Education Appeals ("BSEA") against the West Springfield Public Schools (hereinafter "WSPS") seeking findings that WSPS' proposed Individualized Education Program was not reasonably calculated to provide Gabrielle with a free, appropriate public education; that the residential special education school where the Grandparents had unilaterally placed Gabrielle at the beginning of the 2014-2015 school year is an appropriate placement; and that the Grandparents are entitled to retroactive reimbursement for this placement. They also sought an order that WSPS develop an IEP for Gabrielle's placement at that school for the remainder of the current school year as well as the 2015-2016 school year. Among the Exhibits filed with their Hearing Request, the Grandparents submitted a Caregiver Authorization Affidavit whereby Gabrielle's mother, who resides in Clinton, Massachusetts, authorized Gabrielle's grandmother and grandfather, who reside in West Springfield, Massachusetts, "to exercise concurrently the rights and responsibilities . . . that [she] possess[ed] relative to the education and health care of" Gabrielle.³

¹ "Gabrielle" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

² The Hearing Request was filed in the name of the Student by her Grandparents/Caregivers. Clinton Public Schools (hereinafter "Clinton" or "the District") styled its Motion a Motion to Dismiss the Grandparents and Request for Retroactive Reimbursement. If its Motion were to be granted, Clinton posits, the Hearing Request would move forward in Gabrielle's mother's name. The standing of the Grandparents/Caregivers is the subject of this Ruling.

³ The Caregiver Authorization Affidavit is a notarized document prepared pursuant to M.G.L. c. 201F. The parties entered into the Caregiver Authorization Affidavit in issue on June 28, 2013. It expires on June 28, 2015. (Grandparents' Exhibit 1)

On February 10, 2015, WSPS filed its Response to the Hearing Request, along with a Motion to Join the Clinton Public Schools as a Necessary Party. In support of its Motion, West Springfield submitted an Assignment of School District Responsibility letter dated October 30, 2014, under which the Department of Elementary and Secondary Education (“DESE”) had determined that financial responsibility for Gabrielle’s education belonged to Clinton, based on her mother’s residence,⁴ and that programmatic responsibility belonged to West Springfield, where Gabrielle was “currently living with caregivers.” By letter dated February 11, 2015, Clinton acknowledged to the BSEA that it was the fiscally responsible school district in the case and indicated that it did not object to being joined in the matter.

During a Conference Call that took place on March 3, 2015, West Springfield further elaborated on the contention it had raised in its Response to the Grandparents’ Hearing Request that the Grandparents did not have standing to file a Hearing Request on behalf of Gabrielle.⁵ On March 13, 2015 Clinton filed a Motion to Dismiss, along with a Memorandum in support of its Motion. On March 20, 2015 the Grandparents filed the Student’s Opposition to the Clinton Public Schools’ Motion to Dismiss and Memorandum in support thereof.

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

⁴ The Department of Elementary and Secondary Education (DESE)’s Assignment of School District Responsibility letter dated October 30, 2014 noted that Gabrielle’s father’s last known address was the same as her mother’s, but that it was “unclear whether or not he continues to live at this address.” In support of its Motion to Join the Wachusett Regional School District as a Necessary party, filed on March 25, 2015, Clinton submitted an updated Assignment of School District Responsibility letter dated March 19, 2015. According to the updated letter Gabrielle’s father’s residence is in Sterling, Massachusetts. Pursuant to this most recent assignment, financial responsibility for Gabrielle’s education is to be shared between Wachusett Regional School District (hereinafter “WRSD”) (which includes the town of Sterling) and Clinton, based on her parents’ residence, and programmatic responsibility is assigned to West Springfield. On April 3, 2015, WRSD filed a response to Clinton’s Motion to Join, noting that it intended to seek the DESE’s review and revision of its assignment of joint financial responsibility to Wachusett and reserving its right to seek dismissal as a party defendant in this matter before the BSEA.

⁵ During this Conference Call, Clinton indicated through its attorney that it believed Gabrielle’s mother did not agree with Gabrielle’s unilateral placement at the specific residential special education school chosen by the Grandparents. On March 5, 2015 the Grandparents’ attorney submitted a letter signed by Gabrielle’s mother explaining that she did indeed support her daughter’s placement at that school.

consistent with)' an entitlement to relief."⁶ 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."⁷ 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). . ."⁸

B. Statutory Interpretation

Whether the Grandparents have standing to file the instant BSEA claim turns on interpretation of Massachusetts General Laws chapter 201F, the statute that authorizes the Massachusetts Caregiver Authorization Affidavit. Generally, statutes are interpreted "according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief of imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated."⁹ In interpreting a statute, case law dictates that the decision-maker begin with the plain language of the statute, and enforce the statute according to its plain wording as long as that wording is "clear and unambiguous" and "its application would not lead to an absurd result."¹⁰ Furthermore, the words and phrases of a statute may not be viewed in isolation; they must be understood within the larger context of the statute.¹¹

C. The Caregiver Authorization Affidavit

The Massachusetts Caregiver Authorization Affidavit filed in this case specifically provides the Grandparents with the authorization "to exercise concurrently the rights and responsibilities . . . that [the undersigned parent] possess[es] relative to the education of" Gabrielle. The question before me is whether these rights and responsibilities conveyed to the Grandparents through the Affidavit include the ability to file a claim before the BSEA.

⁶ *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

⁷ *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995).

⁸ *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted).

⁹ *Industrial Fin. Corp. v. State Tax Comm'n*, 367 Mass. 360, 364 (1975).

¹⁰ See *Martha's Vineyard Land Bank Comm'n v. Assessors of W. Tisbury*, 62 Mass. App. Ct. 25 (2004) (internal quotation marks and citations omitted) ("Where the language of a statute is clear and unambiguous, it is conclusive as to legislative intent ...and the courts enforce the statute according to its plain wording ... so long as its application would not lead to an absurd result.") See also *Purity Supreme, Inc. v. Attorney Gen.*, 380 Mass. 762, 782 (1980) ("A general term of a statute may not be construed differently from its plain meaning, especially in the absence of legislative or administrative intent so to construe it.")

¹¹ *Selectmen of Topsfield v. State Racing Comm'n*, 324 Mass. 309, 312-13 (1949) ("All the words of a statute are to be given their ordinary and usual meaning, and each clause or phrase is to be construed with reference to every other clause or phrase without giving undue emphasis to any one group of words, so that, if reasonably possible, all parts shall be construed as consistent with each other so as to form a harmonious enactment effectual to accomplish its manifest purpose.")

D. Standing to File BSEA Claim

In its Motion to Dismiss Grandparents and Request for Retroactive Reimbursement, Clinton advances two arguments. First, the District asserts that the Grandparents lack standing to bring the claim, because Gabrielle's mother "is representing her in this matter." Second, the District argues that the claim for retroactive reimbursement must be dismissed as Gabrielle's mother "does not have standing to request reimbursement since she has not paid any out-of-pocket expenses for the private school program." The latter argument need be addressed only if the Grandparents are dismissed from the matter for lack of standing, so I begin with the former.

The District acknowledges that the Caregiver Authorization Affidavit statute, Massachusetts General Laws chapter 201F, permits a parent to authorize a designated caregiver to exercise certain concurrent parental rights and responsibilities relative to a designated minor's education and health care. It points to one phrase in section 3, however, to argue that a parent may only authorize a designated caregiver to represent the minor in special education matters when the caregiver is "standing in" for the parent.¹² According to Clinton, which relies on a dictionary definition of "stand in" as "a person or thing that takes the place of someone or something else for a period of time," a caregiver may only represent a minor in special education matters when he or she is taking the place of the authorizing parent. In this matter, the District asserts, Gabrielle's mother is representing her daughter because she is listed as a parent on the Request for Hearing, which states that the parent and grandparents together seek a finding from the BSEA. Moreover, it points to the letter submitted by Grandparents' counsel in which the mother indicates that she has been in touch with the caregivers and is in support of their decisions regarding Gabrielle's education as proof that Gabrielle's mother represents her, and therefore the Grandparents have not been taking her place or, therefore, standing in for her.

The Grandparents, on the other hand, emphasize the word "concurrent," in the statute, relying on its dictionary definition of "operating or occurring at the same time," and "acting in conjunction." They argue that the intent of the statute is to permit caregivers to work together with the authorizing individual to make educational and other decisions on behalf of the child. Furthermore, they assert that the fact that they – and not Gabrielle's mother – filed the Hearing Request, demonstrates that Gabrielle's mother is not acting as her representative in this matter, and they state that her mother's agreement with the Grandparents' actions does not void their caregiver authorization. Instead, it shows that Gabrielle's mother and her Grandparents have been working in the concurrent manner contemplated by the statute.¹³

¹² Pursuant to Section 3 of M.G.L. c. 201F, a caregiver may "make educational decisions on behalf of the minor and in all other ways stand in for the authorizing party with respect to federal, state and district educational policy, including but not limited to, accessing the minor's educational records, representing the minor in enrollment, disciplinary, curricular, special education or other educational matters, signing permission slips for school activities and any other decision that facilitates the minor's educational experience."

¹³ Finally, the Grandparents point to DESE's October 30, 2014 "Assignment of School District Responsibility" letter to West Springfield, *supra* note 4 and accompanying text, whereby Clinton, as the school district where Gabrielle's

The plain language of M.G.L. ch. 201F § 2 reads, in pertinent part, as follows:

A parent, legal guardian or legal custodian of a minor, by a caregiver authorization affidavit, may authorize a designated caregiver to exercise certain concurrent parental rights and responsibilities relative to a designated minor's education and health care, as described in section 3. If a conflicting decision is made under these concurrent rights and responsibilities, the decision of the authorizing party shall supersede the description of the caregiver.

The caregiver authorization affidavit shall only authorize those rights and responsibilities that the authorizing party possesses and shall not divest the authorizing party of his rights or responsibilities.

The plain language of this section demonstrates that the authorizing party and the caregiver are meant to work concurrently as to the rights and responsibilities relevant to the education and health care of the designated minor. The statute anticipates the possibility of a conflict between an authorizing party and the caregivers she authorizes. Such a conflict would not arise if the caregivers could exercise these rights and responsibilities only in the absence of the authorizing party.

The language of M.G.L. ch. 201F § 3 provides, in pertinent part, that under a caregiver authorization affidavit a caregiver may "make educational decisions on behalf of the minor and in all other ways stand in for the authorizing party with respect to federal, state, and district educational policy, including, but not limited to, accessing the minor's educational records, representing the minor in enrollment, disciplinary, curricular, special education or other educational matters, signing permission slips for school activities and any other decision that facilitates the minor's educational experience." This section of the statute provides explicit authorization for a caregiver to represent a designated minor in special education matters. Interpreted within the context of M.G.L. ch. 201F § 2, this is one of the "concurrent parental rights and responsibilities" that a designated caretaker may exercise.

The Grandparents, therefore, are authorized by the Caregiver Authorization Affidavit to represent Gabrielle in special education matters, including filing for hearing before the BSEA.¹⁴ Interpreted in harmony with the remainder of the statute, "stand in for the authorizing party" does not mean that a caregiver's ability to make the educational decisions for the designated minor listed after that phrase in M.G.L. ch. 201F § 3(3) requires the absence of the authorizing party. Moreover nothing in the plain language of the statute limits the Grandparents' ability to

mother resides, is assigned fiscal responsibility for Gabrielle's education, and West Springfield, as the school district where Gabrielle resides, is assigned programmatic responsibility. They argue that if Clinton's Motion to Dismiss is allowed, West Springfield would remain programmatically responsible for Gabrielle but there would be no parent/guardian with whom the District could collaborate on Gabrielle's behalf. To avoid this "absurd result," Clinton asserts, the Grandparents must have standing in this matter. I agree.

¹⁴ See M.G.L. ch. 201F §§ 2, 3.

represent Gabrielle in special education proceedings where her mother remains involved in her life.

Because I have found that the Grandparents have standing to pursue this claim before the BSEA, I need not address the District's argument that in the absence of the Grandparents as claimants, Gabrielle's mother cannot request retroactive reimbursement.

CONCLUSION

Upon consideration of Clinton Public Schools' Motion to Dismiss Grandparents and Request for Retroactive Reimbursement and the Grandparents' Opposition thereto, as well as the relevant documents submitted by the parties, I find that the Grandparents do have standing to pursue this matter before the BSEA.

ORDER

The District's Motion to Dismiss Grandparents and Request for Retroactive Reimbursement is hereby DENIED.

A pre-hearing conference in this matter is scheduled to take place at 10:00 am on April 15, 2015. The Hearing will take place on May 1, 4 and 7, 2015.

By the Hearing Officer:

Amy M. Reichbach
Dated: April 6, 2015