

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In re: Maynard Public Schools

BSEA #1609990

RULING ON SCHOOL'S MOTION TO DISMISS APPEAL

This ruling is rendered pursuant to M.G.L. Chapters 30A and 71B; 20 U.S.C. §1401 et seq.; 29 U.S.C. § 794; and the regulations promulgated under these statutes.

HISTORY OF THE CASE

On May 26, 2016 Parents filed a hearing request with the BSEA in the above-entitled matter and a hearing was scheduled for June 30, 2016. On June 8, 2016 the Maynard Public Schools (MPS) requested a postponement of the initial hearing date. On June 10, 2016 MPS filed its Response to Parents' Hearing Request, alleging that said hearing request failed to state a claim upon which the BSEA could grant relief. A pre-hearing conference call was held on June 14, 2016. MPS' postponement request was granted. MPS indicated that it would file a Motion to Dismiss Parents' Appeal (MTD) and Parents indicated that they would not oppose MPS' MTD. MPS did file its MTD, with a memorandum in support thereof, and Parents have filed no written Opposition to MPS' MTD. Neither side requested oral argument regarding this MTD.

STATEMENT OF THE CASE

Student, now over 22 years of age and no longer attending MPS, was a former MPS special education student, presenting with intellectual and physical disabilities. On June 2, 2014 Student was sexually assaulted in her special education classroom by a fellow student in her special education program while Student was allegedly left without any adult supervision for an extended period of time.

Through this BSEA Appeal, Parents have essentially filed a negligence / tort action against MPS. Parents seek no special education placement or compensatory special education services from MPS. Instead Parents / family seek purely monetary damages from MPS, the Maynard School Committee, the Town of Maynard and specifically named individuals for the June 2, 2014 incident. Included in Parents' BSEA Appeal is the statutory notice required under M.G.L.c.258 s.4 of the Massachusetts Tort Claims Act. Parents' Hearing Request indicated that said hearing request was filed to exhaust administrative remedies before filing their court action.

RULING

Based upon all documents submitted and a review of the applicable law, MPS' MTD is **GRANTED**.

My analysis follows.

Pursuant to both the Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.01(g)(3) and the Hearing Rules for Special Education Appeals Rules XVII B(1) and (4), a BSEA Hearing Officer may grant a MTD due to lack of jurisdiction or failure to state a claim upon which relief may be granted. Both conditions are met in this case.

The BSEA has no subject matter jurisdiction over the issue raised in Parents' Hearing Request – therefore Parents have failed to state a claim upon which relief may be granted by the BSEA. Pursuant to M.G.L.c.71B s. 2A BSEA subject matter jurisdiction is limited to:

resolution of disputes between and among parents, school districts, private schools and state agencies concerning: (i) any matter relating to the identification, evaluation, education program or educational placement of a child with a disability or the provisions of a free and appropriate public education to the child arising under this chapter and regulations promulgated hereunder or under the Individuals with Disabilities Act, 20 U.S.C. section 1400 et seq., and its regulations; or (ii) a student's rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, and its regulations.

The claims in Parents' Hearing Request have absolutely nothing to do with identifying Student as a child with a disability, evaluating her, her educational program/services, her educational placement or her receipt of a free and appropriate public education (FAPE). No educational evaluations, programs, placement or services are sought. No compensatory services over past issues are sought. No denial of FAPE or any educational services are alleged. There are no allegations that Student was denied any educational benefits or discriminated against due to her disability. This is purely a negligence action seeking monetary damages for a tort allegedly committed against Student.

Given that Parents' Hearing Request does not assert any special education claims or seek any remedies authorized under state or federal special education law or Section 504, the BSEA has no jurisdiction over such claims.

While the BSEA has no authority to award monetary damages, the 1st Circuit requires exhaustion of administrative remedies even when only monetary damages are sought but only in those cases asserting claims based upon rights protected under the IDEA (20 U.S.C. §1400 et seq). See *Frazer v. Fairhaven* 276 F. 3d 52, 61 1st Cir. 2002; *Diaz-Fonseca v. Puerto Rico* 451 F. 3d 13, 28-29 (1st Cir 2006). The issues raised in Parents' Hearing Request have nothing to do with any of the rights or educational issues protected under federal or state special education law. Therefore there are no educationally related claims or issues to exhaust.

Based upon the above, I conclude that the BSEA has no jurisdiction over any of the claims asserted by Parents; exhaustion of administrative remedies is not required because no Parental claims are based upon any educational issues or rights protected by the IDEA or special education law; and Parents' Hearing Request fails to state a claim upon which relief can be granted.

ORDER

MPS' MTD is **GRANTED**.

By the Hearing Officer,

Dated: August 8, 2016