

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Bureau of Special Education Appeals

In Re: Student

&

BSEA No. 1611011

Natick Public Schools

RULING ON MOTION TO DISMISS

On June 17, 2016 Parent filed her initial *Hearing Request* with the BSEA in which she sought “determination if retaliation/discrimination and denial of FAPE occurred.” Attached to the *Hearing Request* form was a several-page chronology of alleged interactions and communications between and among Parent, Natick and Student.

On June 23, 2016, Natick filed a *Response and Motion to Dismiss the Parents’ Hearing Request* in its entirety for failure to state a claim on which relief may be granted. Natick also sought dismissal of what it construed to be claims regarding residency, student records, and limitations on communication between Parent and Natick on the grounds that the BSEA lacked jurisdiction over these issues and/or these issues already had been addressed by state courts or other agencies.

On July 5, 2016 Parent filed a *Motion to Amend Complaint Against Natick Public Schools* (hereafter *Amended Hearing Request*). The *Amended Hearing Request* comprises sixteen (16) pages consisting of a claim that Natick had deprived Student of FAPE by retaliation against Parent and creation of a “hostile environment” as well as a chronology of alleged events in support of that claim. The relief that Parent sought in the *Amended Hearing Request* is set forth below:

[Parent] is seeking relief and requests that NPS learn and abide by Federal, State laws and regulations that govern education as well as their own policies. [Parent] is convinced that had NPS followed Federal and State laws they would not have illegally excluded [Student], filed appeal, failed to [comply with multiple rules, regulations and statutes]. [Parent] also requests that NPS train all subordinates to allow freedom

to speak up and advocate for a child...to dispel the sub-climate of fear and intimidation that clearly exists in NPS.

On the same date (July 5, 2016), Parent filed a pleading entitled *[Student's] Motion to Uphold Hearing Against Natick Public Schools*, which I construe as a *Response to Natick's Motion to Dismiss*. (Hereafter *Response*). This *Response* consists of a 23-page narrative regarding the previously- alleged retaliation and hostile environment claims against Natick.

On July 14, 2016 Natick filed a *Supplemental Motion to Dismiss and Response to the Parent's Amended Hearing Request (Supplemental Motion)*. As grounds therefor, Natick stated that Parent failed to state a claim on which relief could be granted and that the BSEA "lacks jurisdiction over vaguely alleged claims which have been previously-adjudicated by PQA, Middlesex Superior Court, the Supervisor of Public Records, and OCR."¹ Natick's *Supplemental Motion* also states that Parent has made no request for relief specific to Student, who currently attends a private special education day school under an accepted IEP from Natick.

On July 25, 2016 Parent filed a *Supplemental Motion to Uphold and Response to Natick Public Schools Request for Dismissal of Hearing (Supplemental Response)*² In the *Supplemental Response*, Parent elaborated further on her prior allegations, and included allegations with respect to DCF. Parent also asked for specific relief for Student including "language classes for [Student], access to out-of-district sports, drama class, as well as private therapy that would compensate for NPS failure to identify, evaluate, accommodate out of retaliation that led to the need for an out of district placement." Attached to the *Supplemental Response* are nine exhibits which appear to be printed email chains between Parent and School and/or DCF personnel.

At a conference call held on July 25, 2016 the parties agreed to proceed to a pre-hearing conference to be held on September 15, 2016 for the purpose of clarifying the issues in dispute in this matter. Subsequently, Natick indicated that its staff would not be available on that date, and the pre-hearing conference was postponed to September 30, 2016.

DISCUSSION

Under Rule 17B of the BSEA *Hearing Rules for Special Education Appeals*, as well as the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3) a BSEA hearing officer may allow a motion to dismiss if

¹ The School did not append documentary evidence of such prior adjudication.

² The Supplemental Response contained a Motion to Join DCF as a party in this matter. This Motion was denied in an Order issued on August 16, 2016.

the party requesting the appeal fails to state a claim on which relief can be granted.

Since this Rule is analogous to Rule 12(b)(6) of the Federal and Massachusetts Rules of Civil Procedure, BSEA hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim. Specifically, a hearing officer must consider as true all facts alleged by the party opposing dismissal and should not dismiss the case if those facts, if proven, would entitle the non-moving party to relief that the BSEA has authority to grant. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Ocasio-Hernandez v. Fortunato-Burset*, 640 F. 3d 1 (1st Cir. 2011).

Put another way, a motion to dismiss will be denied if “accepting as true all well-pleaded factual averments and indulging all reasonable inferences in the plaintiff’s favor...recovery can be justified under any applicable legal theory.” See *Caleron-Ortiz v. LaBoy-Alverado*, 300 F.3d 60 (1st Cir. 2002). The factual allegations must be sufficient to “raise a right to relief above a speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact.)” *Bell Atlantic v. Twombly*, 550 U.S. 554, 555 (2007).

Dismissal of an IDEA due process claim must be approached with caution, however, especially when the party opposing dismissal is appearing *pro se*. 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 of the nature of the dispute. The U.S. 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’s claim is and the grounds upon which it rests.” *Leatherman v. Tarrant County NICU*, 507 U.S. 163, 168 (1993).

This principle is particularly important when the party opposing dismissal lacks representation, and a hearing request of a *pro se* party is to be liberally construed. As the First Circuit has explained:

Our judicial system zealously guards the attempts of *pro se* litigants on their own behalf. We are required to construe liberally a *pro se* complaint and may affirm its dismissal only if a plaintiff cannot prove any set of facts entitling him or her to relief...the policy behind affording *pro se* plaintiffs liberal interpretation is that if they present sufficient facts, the court may intuit the correct cause of action, even if it was imperfectly pled. *Ahmed v. Rosenblatt*, 118 F.3d 886 (1st Cir. 1997)

In the instant case, Parent, who is *pro se*, has filed multiple pleadings in a good-faith effort to respond to the School's *Motions to Dismiss*. In each such pleading, Parent has elaborated on her claims against the School, attempted to link her factual allegations with Student's entitlement to FAPE, and has adjusted her claims for relief to relate specifically to Student. In so doing, Parent has certainly provided enough information to notify the School and the BSEA (1) that she believes Student has been deprived of a FAPE as a result of allegedly unlawful actions by Natick and (2) Student is entitled to some type of compensatory service to redress this alleged deprivation.

Some of Parent's claims may prove to fall within the purview of the BSEA's authority; of those claims, Parent may or may not be able to meet her burden of proof at a hearing. Other claims may turn out to be outside the scope of the BSEA's jurisdiction, or otherwise not be appropriate for consideration by the BSEA. At this juncture, especially in light of Parent's *pro se* status, it would be both premature and contrary to the mandate for notice pleading and liberal construction of pleadings to dismiss Parent's claims against Natick fully or in part without having taking steps to fully ascertain just what those claims consist of and without having considered any evidence.

Rather, the appropriate course of action is to proceed to the in-person pre-hearing conference that has already been scheduled by agreement of the parties. As stated in in Rule V of the BSEA *Hearing Rules*, the explicit purpose of such a conference is to enable the parties and the Hearing Officer to "clarify or simplify the issues" and address "remedies, identification of areas of agreement and disagreement, discovery...settlement, prehearing conference orders, and/or organization of the proceedings."

CONCLUSION AND ORDER

For the foregoing reasons, the School's *Motion to Dismiss* and *Supplemental Motion to Dismiss* are **DENIED** without prejudice.

As previously agreed by the parties, a pre-hearing conference in this matter will take place on:

September 30, 2016

10:00 AM

at the administrative offices of the Natick Public Schools, 13 East Central Street, Natick, MA.

Pursuant to Rule V of the BSEA *Hearing Rules*, the parties shall be prepared to clarify and simplify the issues in dispute and the remedy sought as well as to address the other issues set forth in the Rule and referred to above.

Additionally, as required by Rule V, the participants shall have full authority to settle this matter or have immediate access to such authorization.

By the Hearing Officer,

Sara Berman

Dated: August 26, 2016