## COMMONWEALTH OF MASSACHUSETTS

## Division of Administrative Law Appeals

Bureau of Special Education Appeals

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In Re: Alice[[1]](#footnote-1)

& BSEA #1806205

Old Rochester Regional School District

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**RULING ON SCHOOL’S MOTION TO DISMISS**

 This matter comes before the Hearing Officer on the School’s Motion to Dismiss several claims and potential claims raised in the Parents’ January 25, 2018 Request for Hearing. The School asserts that the BSEA lacks jurisdiction to consider parental claims made under federal and state statutes other than those directly addressing the educational rights of students with disabilities. The School further asserts that the BSEA lacks jurisdiction to consider any constitutional or common-law claims fairly raised by the Parents’ recitation of facts. Finally, the School points out the Parents’ claims are circumscribed by the operation of the applicable statute of limitations and by principles of administrative law. The Parents respond that they seek factual and legal determinations and appropriate orders for relief by the BSEA only in those areas over which the BSEA has uncontested jurisdiction.

I. STANDARD FOR MOTIONS TO DISMISS

 Under the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01(7) (g)(3) and Rule 17B of the *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.

 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 (in this case, Parents) and should not dismiss the case if those facts, if proven, would entitle the claimant to relief that the BSEA has authority to grant. *Ashcroft v. Iqbal, 556 U.S. 662 (2009), Occasion-Hernandez v. Fortunato-Burset, 640 F.3rd 1 (1st cir. 2001).*

II. BSEA JURISDICTION

 The BSEA is an administrative dispute resolution body with a limited, highly specialized mission. It has jurisdiction over requests for hearing filed by a parent or school district on any matter concerning the eligibility, evaluation, placement, IEP, or provision of special education in accordance with state and federal law, or the procedural protections of state and federal law for students with disabilities. A parent of a student with a disability may also request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973.

M.G.L.c 71B; 603 CMR 28.08 (3); 20 U.S.C.§1415; 20 U.S.§794; 34 CFR 300.507515; 34 CFR 104.

III. STATUTE OF LIMITATIONS

 The action(s) which forms the basis of the Hearing Request must have occurred no more than two years prior to the filing date.

20 U.S.§1415(b)(6)(B); 34 CFR 300.507(a)(2); *Shrewsbury Public Schools*, 22 MSER 166 (2016).

IV. FACTS

 The Hearing Request goes into great detail about the Student’s educational history at Old Rochester Regional School District. Much of that detail is either not in dispute or not relevant to a determination of the Student’s rights under the IDEA and M.G.L. c71B. For the purposes of this Motion, considering the Parents’ assertions as true, the relevant facts are:

a) The Student is a twelve year old resident of the Old Rochester School District. She is, and has been throughout the course of the dispute, eligible to receive a free appropriate public education in accordance with the IDEA and M.G.L. c71B

b) The Student’s May 2015-May 2016 IEP was accepted by the Parents.

c) The Student’s February 2016-February 2017 IEP was accepted by the Parents.

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d) The IEP proposed to begin in February 2017 called for a full inclusion placement at the elementary school for the remainder of the 2016-2017 school year and a full inclusion placement at the Junior High School for the beginning of the 2017-2018 school year. The Parents accepted the proposed IEP.

e) In September 2017 the Parent met with school administrators to discuss recent allegations of bullying and the development of a safety plan. The School investigated the claims of bullying but found no support for the claims.

f) On September 6, 2017 the Parents consented to a re-evaluation of the Student.

g) On September 27, 2017 the Parents notified the School of their intent to unilaterally place the Student at the Friends Academy, an unapproved, private, general education school. The Student entered the 7th grade as a day student at the Friends Academy shortly thereafter.

h) The Parents filed a Hearing Request with the BSEA on January 25, 2018.

i) The Team reconvened on February 1, 2018. The Hearing Request has not been amended to include any resulting Team decisions.

DISCUSSION

 After careful consideration of the facts and claims alleged by the Parents, treating them as true and viewing them in the light most favorable to continuing action at the BSEA, I find that most of the claims set forth in the Hearing Request fall outside the BSEA’s jurisdiction and should be dismissed[[2]](#footnote-2).

In the Hearing Request the Parents assert multiple claims that the School failed to provide the Student with a free appropriate public education at all times while she attended the district’s elementary and junior high schools. They claim that the School committed multiple procedural violations of the IDEA and M.G.L. c7B. They claim that the School failed to keep the Student safe from sexual harassment and bullying based on her sex and disability. They claim that the School failed to follow investigative and disciplinary procedures set out in the student handbook. They claim that the School permitted and failed to prevent sexual and physical assaults in violation of Title IX and state criminal law. They claim that the School violated state laws pertaining to child abuse and neglect. They claim retaliation. They claim that, as a result of the School’s deliberate actions and negligence, they and the Student have suffered severe and continuing trauma, anxiety and depression. They seek an award of reimbursement for their injuries in the form of two years of publicly funded placement at Friend’s Academy.

As a forum with limited subject matter jurisdiction, any factual/legal assertions that could be construed as viable claims solely under Title IX, M.G.L. c151B, M.G.L.c 119 and M.G.L.c71 §370 are not properly lodged here. *Rafael v. Norton,* 22 MSER 169 (2016); *Mashpee****,*** 14 MSER 143 (2008). Similarly, claims that school actions violated principles of constitutional law or common law tort do not fall within the limited jurisdiction of the BSEA. *Holyoke and Jamal*, 22 MSER 174 (2016); *Springfield and Xylia*, 18 MSER 373 (2012). The BSEA is not the proper forum to complain that a school failed to follow the policies and procedures set out in a student handbook. *Wallis and Lincoln-Sudbury*, 21 MSER 199 (2015).

Furthermore, the IDEA limits BSEA consideration of parental claims to those arising within the two year period immediately preceding the date of the hearing request, here, claims arising after January 25, 2016. Finally the BSEA may not consider claims involving an IEP accepted by the Parents and not rejected before its expiration. *Natick and Framingham*, 23 MSER 199 (2017); See also: *Hampden-Wilbraham*, 715 F.Supp 185 (D.Mass 2010).

Taken together and applied to the facts set out in the Parents’ Hearing Request, these well-established principles and precedents serve to confine the Parents’ viable issues for resolution at the BSEA to:

1) Whether the 2017-2018 IEP developed by Old Rochester is reasonably calculated to provide a free appropriate public education to the Student? and

2) If not, are the Parents entitled to reimbursement for expenses associated with the Student’s unilateral placement at the Friend’s Academy during the 2017-2018 school year?

 All other claims and issues set out in the Parents’ Hearing Request are not properly before the BSEA and will not be entertained here.

ORDER

 The School’s Motion for Partial Dismissal of the Parents’ Hearing Request is GRANTED.

By the Hearing Officer

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Lindsay Byrne

Dated: April 4, 2018

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1. “Alice” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. [↑](#footnote-ref-1)
2. I note that the Parents’ Response to the School’s Motion to dismiss reaches very nearly the same conclusion.

3 [↑](#footnote-ref-2)