**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Student v. Monomoy Regional School District BSEA # 2009835

**RULING ON MONOMOY REGIONAL SCHOOLS DISTIRCT’S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Hearing Officer on the Motion of the Monomoy Regional School District (District) for Summary Judgment (Motion). On May 26, 2020, Parents filed a *Hearing Request* in the above-referenced matter alleging denial of a free and appropriate public education to the Student. Thereafter, on November 30, 2020, the District filed the instant *Motion*, including one exhibit, the Affidavit of Mary Oldach (“School’s Exhibit”), in support of its *Motion*. The District asserts that there are no genuine issues of material fact on any elements of the Parents’ claims and that, therefore, the District is entitled to judgment as a matter of law.

On December 21, 2020, the Parents filed their *Response to Summary Judgment* asserting “agreements and disagreements of Monomoy’s ‘FACTS’” and arguing that the “case not be dismissed.” In support thereof, the Parents offered as exhibits Parents’ outline of events, the Winter 2021 MAP Growth Family Report, and the 2020-21 Report Card (collectively, “Parents’ Exhibits”).

Neither Party requested a hearing on this *Motion*. BSEA Rule VII.

**RELEVANT FACTS**:

The Parties agree as to some of the facts and disagree as to others. Where there is disagreement, all reasonable inferences are made in the Parents’ favor as they are adverse to the *Motion*. All facts set out below are presumed true solely for the purpose of this *Motion* and are subject to proof at the Hearing.

1. Student resides in Harwich, Massachusetts within the Monomoy Regional School District (the term “District” refers to both Harwich and Monomoy). He currently attends the 3rd grade at the St. Pius X School where he was unilaterally placed by the Parents in September 2018. (*Hearing Request*)
2. During the 2017-2018 school year, Student attended the Harwich Elementary School as a general education student. (*School’s Exhibit*; *Parents’ Exhibits*)
3. In May 2018, the Parents informed the District that they would be unilaterally placing Student at St. Pius X School. (*Parents’ Exhibit*)
4. Neither the Parents nor the District referred Student for special education testing while Student attended the Harwich Elementary School during the 2017-2018 school year. Student was not evaluated for special education and/or related services while enrolled in and attending the District. (*Motion*) (*Response to Summary Judgment*)
5. In October 2019, Student was independently assessed and “[e]valuation findings [p]resumed dyslexia and ADHD.” That evaluation was shared with the District for the first time as part of the discovery process associated with this BSEA proceeding. (*Parents’ Exhibit*s; *Response to Summary Judgment*)
6. Winter 2021 MAP results shows that Student’s current academic performance is as follows: Language Usage is in the 81st percentile; Mathematics is in the 98th percentile; and Reading is in the 69th percentile. (*Parents’ Exhibits*)
7. Student’s 3rd grade Report Card from St. Pius X School shows “good” and “very good” levels of academic progress across all disciplines for the first trimester of 2020-2021. Teacher comments on Student’s 3rd grade Report Card from St. Pius X School indicate that Student “has hit several milestones during th[e] first trimester. He adheres to the remote schedule beautifully and is ready to work each day. [He] is completely caught up on all assignments and has impressed me with the quality of his work. [Student] is an incredibly bright child and with the help from his family, IEP support and SPXS he will continue to thrive.” (*Parents’ Exhibits*)
8. On May 26, 2020, Parents filed a Request for Hearing in the above-referenced matter. (*Hearing Request*).
9. Whether the District should have referred the Student for an evaluation for special education and/or related services is a disputed issue.
10. Whether Student “was struggling” academically and socially while attending Harwich Elementary School during the 2017-2018 school year is a disputed issue. (*Response to Summary Judgment*).

**LEGAL STANDARD**:

1. *Summary Judgment.*

Summary Judgment is available in a Bureau of Special Education Appeals (BSEA) Hearing if "there is no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law…." 801 CMR 1.01(7)(h). Furthermore, Rule 56(a) of the Federal Rules of Civil Procedure guides hearing officers to grant summary judgment if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. Pro. 56(a). Similarly, Rule 56(a) of the Massachusetts Rules of Civil Procedure instructs that summary judgment may be granted only if the "pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law." Mass. R. Civ. Pro. 56(s). Facts are considered “in the light most favorable to…the non-moving party.” *Xiaoyan Tang v. Citizens Bank, N.A.,* 821 F. 3d 206 (1st Cir. 2016) (quoting *Perez-Cordero v. Wal-Mart P.R. Inc.,* 656 F. 3d 19, 20 (1st Cir. 2011)).

“An issue is ‘genuine’ if it can ‘be resolved in favor of either party,’ and a fact is ‘material’ if it ‘has the potential of affecting the outcome of the case.’” *Tang, supra*, quoting *Perez-Cordero*, *supra* at 25, and *Calero-Cezero v. U.S. Dept. of Justice*, 355 F.3d 6, 19 (1st Cir. 2004). When determining whether a genuine issue of material fact exists, the fact-finder must view the entire record “in the light most flattering” to the party opposing summary judgment and “indulg[e] all reasonable inferences in that party’s favor.” *Maldonado-Denis v. Castillo* Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994); *see Galloway v. United* States, 319 U.S. 372, 395 (1943).

The moving party has the initial burden of producing evidence that there is no dispute of material fact, and the burden then shifts to the party opposing summary judgment to establish, via affidavits or other documents, specific facts showing that there is a “genuine issue for trial.”  *Celotex Corp. v. Catrell*, 477 U.S. 242, 248-50 (1986); *Anderson v. Liberty Lobby*, *Inc*. 477 U.S. 242, 249 (1986); *Kathleen Burns v. Johnson*, 2016 WL 3675157 (July 2016).

1. *Statute of Limitations.*

The IDEA sets forth the permissible timeline for requesting a due process hearing:

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part [20 USCS §§ 1411 et. seq.], in such time as the State law allows.

20 U.S.C. §1415 (f)(3)(C). The statute further allows exceptions to the timeline where the parent was prevented from requesting the hearing due to “specific misrepresentations by the local educational agency,” or because of the “local educational agency's withholding of information that it was required to provide.” 20 U.S.C. §1415 (f)(3)(D); *see also* 34 C.F.R. §300.507 (a)(1) and (2).[[1]](#footnote-1)

**DISCUSSION**:

In the instant matter, the District, as the moving party, failed to meet its initial burden to show that there is no genuine dispute as to material fact between the Parties. The District’s exhibit confirms that Student was a “general education student” during the 2017-2018 school year and that he was not referred by “parents or any member of the Harwich Elementary School … [for] a special education evaluation or 504 evaluation.” However, there remains a dispute of material fact as to whether Student “was struggling” academically and socially while attending Harwich Elementary School and, consequently, whether Student should have been referred for such assessments. These facts are material as they would impact the determination of whether Student was denied FAPE by the District and, hence, the outcome of the instant Appeal. Furthermore, as stated in *In Re: Hale and Newton Public Schools*, “The administrative appeals process under the IDEA and MGL. C. 71B favors a robust exchange of information. Dispositive Motions in advance of hearing are disfavored….” *In Re: Hale and Newton Public Schools*, BSEA #1810148, 24 MSER 161 (Byrne, 2018).

Nevertheless, even if the facts are exactly as Parents describe, the statute of limitations curtails BSEA jurisdiction on all claims stemming from events prior to May 26, 2018 (two years prior to the filing of the *Hearing Request*). Therefore, the only issues remaining before me are as follows:

1. Whether the District failed to meet its Child Find obligations regarding Student dating back to the period between May 26, 2018 and May 26, 2020?
2. If the answer to #1 is “yes,” whether as a result of the District’s failure to identify Student as an IDEA eligible student, it failed to offer Student a FAPE?

**ORDER**

The District’s *Motion for Summary Judgment* is **DENIED**. Nevertheless, unless, prior to the Hearing, Parents file a Motion and introduce information to support a claim that the District had been on notice of Student's alleged disabilities prior to May 26, 2018, all claims stemming from events prior to May 26, 2018 will be dismissed with prejudice.

So Ordered By the Hearing Officer:

Alina Kantor Nir

/s/ *Alina Kantor Nir*

Date: February 9, 2021

1. The Commonwealth of Massachusetts follows the federal statute. [↑](#footnote-ref-1)