**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In re: Student v. South Hadley Public Schools BSEA # 2311287**

**RULING ON SOUTH HADLEY PUBLIC SCHOOLS’ MOTION TO DISMISS FOR LACK OF JURISDICTION**

This matter comes before the Hearing Officer on South Hadley Public Schools’ (District or South Hadley) June 7, 2023 *School District’s Motion to Dismiss for Lack of Jurisdiction*, in which the District asserts that the BSEA “does not hold requisite jurisdiction over the enforcement of BSEA mediation agreements” (*Motion*). The District further clarified[[1]](#footnote-2) that the “Safety Plan [which Parent asserted was not being implemented with fidelity] was included as part of the BSEA mediation agreement and is not a special education or disability related document. The intention was that that issue would be dismissed as part of the motion to dismiss.” Parent responded via email dated June 7, 2023 that “the mediation agreement was to support [Student] with her disabilities. The disabilities listed on her IEP which are mental health related is [sic] the reason the transition plan was put in place to keep [Student] safe while attending school.”

Neither party has requested a hearing on the Motion. Because neither testimony nor oral argument would advance the Hearing Officer’s understanding of the issues involved, this Ruling is issued without a hearing, pursuant to Bureau of Special Education Appeals Hearing Rule VII(D).

For the reasons set forth below, the District’s *Motion*is hereby **ALLOWED, in part, and DENIED, in part**.

**RELEVANT PROCEDURAL HISTORY:**

On May 15, 2023, Parent filed a Hearing Request in the above-referenced matter. In it she stated as follows:

“I'm requesting a BSEA hearing for my daughter [] who resides with both her parents [] in South Hadley, MA 01075…. [Student] is a student at Michael E Smith Middle School in South Hadley[,] MA.

South Hadley School District is the responsible party.

[A] BSEA Hearing is being requested after an IEP meeting, BSEA facilitated meeting and BSEA mediated hearing have been found to be not helpful. There is a BSEA mediation [Agreement dated March 8, 2023] in place that continues to not be followed by the school district.”

On May 23, 2023, the District responded, stating, in part, that because Parent's “complaint is not supported by the facts and lacks sufficient details to proceed to hearing, … the matter should be dismissed without prejudice.” In *Ruling on* *South Hadley Public School District’s Challenge to Sufficiency of Hearing Request* dated May 23, 2023, the District’s motion to dismiss for lack of sufficiency was denied.

On June 5, 2023, the parties participated in a conference call, and Parent clarified her issues for Hearing. Parent indicated that due to the District’s failure to comply with the Mediation Agreement and the Safety Plan contained therein, Student “lost” educational services. As such, my *Order* dated the same date, delineated the issues for Hearing as follows: 1) whether the District complied with the Mediation Agreement and 2) whether the District implemented Student’s safety plan with fidelity.[[2]](#footnote-3) Parent is seeking compensatory services for Student for education missed.[[3]](#footnote-4) The Hearing was scheduled for June 20, 2023, and the parties agreed to participate in a pre-hearing conference on June 13, 2023.

**LEGAL STANDARDS:**

1. *Legal Standard for Motion to Dismiss*

Hearing Officers are bound by the *BSEA* *Hearing Rules for Special Education Appeals* (*Hearing Rules*) and the Standard Rules of Adjudicatory Practice and Procedure, 801 Code Mass Regs 1.01. Pursuant to Rule XVII A and B of the *Hearing Rules* and 801 CMR 1.01(7)(g)(3), a hearing officer may allow a motion to dismiss if the party requesting the hearing fails to state a claim upon which relief can be granted. These rules are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As such, hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim, which require the fact-finder to make a determination based on a complaint or hearing request alone.

To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”[[4]](#footnote-5) 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.”[[5]](#footnote-6) These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”[[6]](#footnote-7)

1. *Jurisdiction of the Bureau of Special Education*

20 U.S.C. § 1415(b)(6) grants the Bureau of Special Education Appeals (BSEA) jurisdiction over timely filed complaints by a parent/guardian or a school district "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child."[[7]](#footnote-8) In Massachusetts, a parent or a school district, "may request mediation and/or a hearing at any time on any matter[[8]](#footnote-9) concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities.”[[9]](#footnote-10) 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….”[[10]](#footnote-11) However, the BSEA "can only grant relief that is authorized by these statutes and regulations, which generally encompasses orders for changed or additional services, specific placements, additional evaluations, reimbursement for services obtained privately by parents or compensatory services."[[11]](#footnote-12)

1. *BSEA Jurisdiction Over Mediation Agreements*

The statutory provision relevant to the Parties’ dispute appears at 20 U.S.C. §1415 (e)(2)(F):

“Written agreement. In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that–

(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence

(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.”[[12]](#footnote-13)

As both the IDEA and its implementing regulations state that a written, signed mediation agreement is “enforceable in any State court of competent jurisdiction or in a district court of the United States,” the vast majority of BSEA decisions have found that the BSEA lacks jurisdiction over claims addressing enforcement of mediation agreements.[[13]](#footnote-14) Further, “it is well settled that a BSEA mediation agreement, signed by all parties *and fully implemented*, precludes a subsequent BSEA hearing on the issues resolved by the agreement. To conclude otherwise would undermine the relevant provisions of federal and state special education law as well as the underlying legislative purpose and public policy favoring informal, voluntary resolution of special education disputes.”[[14]](#footnote-15)

In contrast to a court’s jurisdiction that includes enforcement of a mediation or a settlement agreement regarding a dispute under the IDEA,

“the BSEA Hearing Officer’s jurisdiction may not extend to enforcement because a hearing officer has no mechanism to enforce an agreement (for example, through powers of contempt), just as he/she has no mechanism to enforce an IEP or to enforce a decision of a BSEA Hearing Officer. However, similar to a federal court’s jurisdiction in an IDEA dispute, a Hearing Officer’s jurisdiction may include *consideration of the legal implications of an agreement with respect to parents’ special education rights, and the Hearing Officer may issue orders stating what a school district must do in order to comply with these rights*.”[[15]](#footnote-16)

Hence, a BSEA Hearing Officer has the authority and responsibility to consider a Mediation Agreement and determine whether and to what extent the agreement may alterthe rights and responsibilities of the parties with regard to a student’s special education services and related procedural protections.[[16]](#footnote-17)

**APPLICATION OF LEGAL STANDARDS:**

In evaluating the District’s *Motion to Dismiss*under the **LEGAL STANDARDS** set forth *supra*, I take Parent’s allegations in her Hearing Request as true as well as any inferences that may be drawn from them in her favor, and deny dismissal if these allegations plausibly suggest an entitlement to relief. [[17]](#footnote-18)

Here, Parent is a *pro se* litigant, and, therefore, I interpret her claims and draw inferences therefrom more liberally than would be accorded to a litigant represented by counsel.[[18]](#footnote-19) Parent's May 15, 2023 complaint does not seek to address issues resolved by the March 2023 Mediation Agreement. Instead, it seeks a finding that the District has failed to comply with the March 8, 2023 Mediation Agreement, including the Safety Plan contained therein. Parent also seeks services to make up for Student’s “lost” education due to the District’s alleged failure to implement the Mediation Agreement and Safety Plan. It is clear that I do not have the authority to enforce the Mediation Agreement entered into by Parent and the District.[[19]](#footnote-20) Any claims seeking enforcement must therefore be dismissed. However, my authority allows me to “consider” the “legal implications” of said Agreement “with respect to [Student’s] special education rights” and to “issue orders stating what [the District] must do in order to comply with these rights.” [[20]](#footnote-21) Therefore, Parent’s claim seeking such resolution survives dismissal.

**ORDER:**

The District’s Motion is **ALLOWED, in part, and DENIED, in part**.  To the extent that Parent seeks enforcement of the Mediation Agreement, such claim is dismissed with prejudice. To the extent that Parent seeks an order delineating how the Mediation Agreement alters the rights of Parent and Student and the responsibilities of the District with regard to Student’s special education services and indicating what actions the District must take to comply therewith, such claim survives dismissal. The matter will proceed to Hearing on June 20, 2023 on this claim only.

By the Hearing Officer:

Alina Kantor Nir

Alina Kantor Nir
Dated: June 8, 2023

**COMMONWEALTH OF MASSACHUSETTS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**EFFECT OF FINAL BSEA ACTIONS AND RIGHTS OF APPEAL**

Effect of BSEA Decision, Dismissal with Prejudice and Allowance of Motion for Summary Judgment

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Similarly, a Ruling Dismissing a Matter with Prejudice and a Ruling Allowing a Motion for Summary Judgment are final agency actions. If a ruling orders Dismissal with Prejudice of some, but not all claims in the hearing request, or if a ruling orders Summary Judgment with respect to some but not all claims, the ruling of Dismissal with Prejudice or Summary Judgment is final with respect to those claims only.

Accordingly, the Bureau cannot permit motions to reconsider or to re-open either a Bureau decision or the Rulings set forth above once they have issued. They are final subject only to judicial (court) review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. This means that the decision must be implemented immediately even if the other party files an appeal in court, and implementation cannot be delayed while the appeal is being decided. Rather, a party seeking to stay—that is, delay implementation of-- the decision of the Bureau must request and obtain such stay from the court having jurisdiction over the party’s appeal.

Under the provisions of 20 U.S.C. s. 1415(j), “unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement,” while a judicial appeal of the Bureau decision is pending, unless the child is seeking initial admission to a public school, in which case “with the consent of the parents, the child shall be placed in the public school program.”

Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child’s placement while judicial proceedings are pending must ask the court having jurisdiction over the appeal to grant a preliminary injunction ordering such a change in placement. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

Compliance

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

Rights of Appeal

Any party aggrieved by a final agency action by the Bureau of Special Education Appeals may file a complaint in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review. 20 U.S.C. s. 1415(i)(2).

An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

Confidentiality

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove School District v. Pulitzer Publishing*

*Company*, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

Record of the Hearing

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.

1. The District’s Counsel offered this clarification via email dated June 7, 2023. Counsel offered to clarify the District’s position via formal motion, but, in the interest of time, the undersigned Hearing Officer chose to rely on the email communication. [↑](#footnote-ref-2)
2. On June 6, 2023, Parent amended her Hearing Request, stating that Student “has not received FAPE on more than one occasion this school year with IEP’s [sic] being out of compliance.” Specifically, Parent asserted that Student’s extended evaluation was not completed in a timely manner; that the District failed to provide Parent with an IEP in a timely manner follow a Team meeting on May 10, 2023; that Student was “without education from January 18th, 2023 - February 1, 2023” during a suspension from school; and that Student has been “without education” following a manifestation determination hearing on May 23, 2023, when Student’s behavior was found not to be a manifestation of her disability, but the Team agreed that Student would receive tutoring for the remainder of the 2022-2023 school year. On June 6, 2023, the BSEA issued a Notice of Amended Hearing with an original hearing date of July 11, 2023. The claims asserted in Parent’s June 6, 2023 pleading are not at issue in this Ruling. [↑](#footnote-ref-3)
3. During the conference call, Parent indicated that Extended School Year Services may be necessary to compensate Student for missed education. [↑](#footnote-ref-4)
4. *Iannocchino v. Ford Motor Co.,* 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). [↑](#footnote-ref-5)
5. *Blank v. Chelmsford Ob/Gyn, P.C*., 420 Mass. 404, 407 (1995). [↑](#footnote-ref-6)
6. *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). [↑](#footnote-ref-7)
7. See 34 C.F.R. §300.507(a)(1). [↑](#footnote-ref-8)
8. Limited exceptions exist that are not here applicable. [↑](#footnote-ref-9)
9. 603 CMR 28.08(3)(a).  [↑](#footnote-ref-10)
10. See 29 U.S.C. 794 (Section 504 of Rehabilitation Act); 34 CFR 104. [↑](#footnote-ref-11)
11. *In Re: Georgetown Pub. Sch.*, BSEA # 1405352 (Berman 2014). [↑](#footnote-ref-12)
12. See 34 CFR.300.506(7) (“A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States”). [↑](#footnote-ref-13)
13. See, e.g., *Student v. Worcester Public Schools*, BSEA # 1302473 (Putney-Yaceshyn 2013) (finding that “the BSEA does not have authority to interpret or enforce the Parties' settlement agreements”); *Student R. v. Lincoln Sudbury Regional School District*, BSEA # 11-2546 (Figueroa 2010); *In Re: Israel and the Monson Public Schools*,

BSEA #10-5064 (Byrne 2010). But see *Longmeadow Public Schools*, BSEA # 08-0673 (Crane 2010). [↑](#footnote-ref-14)
14. See *In Re: Revere Public Schools*, BSEA #15-07485 (Berman 2015) (citing 20 USC Sec. 1415(e)(2)(F), 34 CFR Sec. 300.506, and *In re: Jake and Masconomet Regional School District*, BSEA# 11-2194 (Oliver 2010)) (emphasis added). [↑](#footnote-ref-15)
15. *Joseph v. Boston Public Schools*, BSEA # 06-3836 (Crane 2006) (citing to decisions and rulings with respect to a Hearing Officer’s jurisdiction regarding agreements) (emphasis added). [↑](#footnote-ref-16)
16. *In re: Jake and Masconomet Regional School District,* BSEA# 11-2194 (Oliver 2010); see *In Re: Ipswich Public Schools and David*, BSEA # 08-0055 (Crane 2007) (hearing officer considered “whether there was an agreement, either through an accepted IEP or a mediation agreement, for additional or different summer services”); *Longmeadow Public School District*, BSEA # 07-2866 (Crane 2008) (“Because the parties’ settlement agreement relates to rights and responsibilities that fall within the purview of the BSEA (which are defined within the IDEA as the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child, a BSEA Hearing Officer has the authority and responsibility to consider the agreement and determine whether and to what extent the agreement alters the rights and responsibilities of the parties with respect to Student’s special education services and related procedural protections”) (internal quotations and citations omitted). [↑](#footnote-ref-17)
17. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-18)
18. See *Wanham v. Everett Pub. Sch*., 515 F. Supp. 2d 175, 178 (D. Mass. 2007), *amended*, 550 F. Supp. 2d 152 (D. Mass. 2008) (“litigants appearing pro se are afforded wide attitude, especially with respect to technical and procedural requirements”). [↑](#footnote-ref-19)
19. See 20 U.S.C. §1415 (e)(2)(F)(iii). [↑](#footnote-ref-20)
20. *Joseph v. Boston Public Schools*, BSEA # 06-3836 (Crane 2006); see *I.K. v. Montclair Bd. of Educ.*, 72 IDELR 101 (D.N.J. 2018) (ruling the because the parent's complaint did not challenge the enforceability of the mediation agreement, the administrative law judge erred in dismissing the parent's claim that the placement outlined in the mediation agreement was not the student's least restrictive environment). [↑](#footnote-ref-21)