**COMMOWEALTH OFF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re:** Student v. **BSEA #** 2405038

Springfield Public Schools

**RULING ON SPRINGFIELD PUBLIC SCHOOLS’**

**MOTION TO DISMISS**

On November 4, 2022, Parent/Advocate requested a Hearing in the above-referenced matter. Parent, who is a special education advocate in Massachusetts, filed this Hearing Request on behalf of Student as his advocate. Student is 23 years old.

Student’s Hearing Request asserts that the failure of Springfield Public Schools’ Superintendent to meet with Student and/or Parent to discuss the MCAS Appeal process denied Student a free, appropriate public education (FAPE).

Student further noted that Springfield Public Schools’ (“Springfield” or “District”) failure to consider Student’s college courses and/or other academic achievements while he attended the AIC College Steps program and the District’s failure to consider emergency regulations also resulted in a denial of a FAPE to Student.

Lastly, Student alleges that in failing to award Student a high school diploma, Springfield’s Superintendent violated Student’s and Parent’s rights under the 14th Amendment of the United States Constitution by depriving Student of life, liberty or property without due process. According to Student, this case involves deprivation of property, that is, the diploma, and liberty, because Springfield injured Student’s liberty in failing to maintain his good name and reputation.

To remedy the aforementioned violations Student seeks an order from the BSEA that the,

…Superintendent does the appeal and further seek all appeals that could be appropriate and take any necessary steps for [Student] to obtain his diploma.

[Student] further seek[s] if necessary that the school pay for [Student] to take a biology class through AIC College [Steps] to allow him to be in a new cohort.

On December 7, 2023, Springfield filed a Motion to Dismiss Student’s Hearing Request. First, relying on the IDEA’s two-year statute of limitations, Springfield argued that Student’s claims, if any, were limited to the period from November 27, 2021, to November 27, 2023. Moreover, because Student turned 22 years old in early April of 2022, the date on which his entitlement to special education ended, any viable claim would have had to arise during the slightly over four-month period between November 27, 2021 and April 6, 2022.

Springfield also argued that the laws and regulations on which Student relies fall outside the jurisdiction of the BSEA and, that because the BSEA could not grant the remedy sought by Student/ Parent the case should be dismissed.

After having requested and been granted an extension of time to respond to Springfield’s Motion, Student’s Advocate filed an Opposition to the Motion to Dismiss on December 22, 2023. This submission centers on the modified competency determination applicable to all general and special education students in out-of-district placements in response to the COVID-19 emergency. Student reasoned that since he attended the College Steps program (an out-of-district, private placement funded by the District) Springfield was required to contact him and offer this option, but the District never did. Student further argued that a district that fails to offer a student a FAPE cannot graduate him. Student demanded to be allowed to proceed to Hearing.

Upon consideration of Student’s Hearing Request and the Parties’ submissions regarding the Motion to Dismiss, Springfield’s Motion to Dismiss is granted in part, as explained below.

**FACTS**:

The facts cited herein are presumed to be true only for purposes of this Motion to Dismiss.

1. Student is a disabled student who was found eligible to receive special education services by Springfield. Student received special education services until April 6, 2022, when he turned 22 years old, and special education entitlement ended by operation of law.[[1]](#footnote-1)
2. Student attended the Springfield Renaissance School (“Renaissance”) for high school. Throughout high school, Student was on a diploma track.
3. In order to receive a diploma, Student must pass all areas of the Massachusetts Comprehensive Assessment System (MCAS) and meet local graduation requirements. According to Parent, Student has met all requirements except that he has not passed the biology MCAS. As such, he did not receive a high school diploma.
4. On February 12, 2019, while Student was in the twelfth grade, Michelle M. Serafino, Springfield’s High School Special Education Supervisor, wrote an email to Parent in reference to Student’s 688 referral. Ms. Serafino noted that mistakes with Student’s 688 referral had been corrected and submitted to the Department of Developmental Services (“DDS”), and asked Parent if anyone from Renaissance had contacted Parent regarding the Cohort Appeal for Student. Ms. Serafino further offered to meet with Parent, Renaissance staff and DDS to answer any questions Parent may have.
5. Parent responded to Ms. Serafino’s email on February 12, 2019, that she

…had not spoken to anyone regarding the cohort appeal nor have any interest in granting consent to move forward with that process. I’m not gonna [sic] allow that process to push my son out of school prior to him being ready.

1. The Massachusetts Department of Elementary and Secondary Education (“DESE”) established the MCAS Performance Appeals process in 2002 for students who meet graduation requirements except for passing all of the required the MCAS High School tests. This process is intended to

…provide eligible high school students who have been unable to pass the required MCAS tests with an additional opportunity to demonstrate through their coursework that they meet or exceed the State’s Competency Determination (CD) standard in order to earn a diploma.

… A District may file an appeal for a student who has not yet passed one or more of the required MCAS high school tests, if the student meets all eligibility requirements. The superintendent may initiate an appeal for an eligible student with a disability with the consent of the parent (or the student who is age 18 or older). The superintendent (or designee) or executive director must file an appeal on behalf of a student with a disability if the parent (or student aged 18 or older) requests it.[[2]](#footnote-2)

1. The Performance Appeals Process offers four options: cohort appeal; transcripts appeal; portfolio appeal; and Valor Act- facilitation of on-time graduation for high school transfer students in military families. The cohort appeal and the portfolio appeal are specifically designed to be available to special education students. Additionally, students are given an opportunity to re-take the MCAS test in the area they did not pass. During COVID, another option to help students (whether in general or special education) struggling to pass the MCAS, became available, that is, the Competency Determination. The specific process describing Performance Appeals can be found at 603 CMR 30.00.
2. The Cohort Appeal involves a comparison of the grade point average (GPA) and MCAS scores of a student for whom the appeal is filed and those of at least six (6) classmates enrolled in the same courses at the same time as the student requesting the Cohort Appeal.
3. The Portfolio Appeal is a compilation or portfolio that includes work samples of the appellant during one or more years in high school that attempts to demonstrate that the appellant’s performance level is comparable to that of a student who earned a score of *Needs Improvement* on the high school MCAS test subject to the appeal. There are specific guidelines and requirements that must be followed in each content area. Failure to follow the guidelines may result in a finding of “*insufficient* to show that the student has met the required standard”. When the appellant is a special education student, DESE recommends that general and special educators collaborate in the development of the student’s portfolio.
4. Sometime in 2021, Parent consented to submission of a cohort appeal and Springfield submitted the cohort appeal. DESE returned a “no determination” finding due to Student’s GPA being lower than the median of his cohort comparators, thus, rendering the cohort appeal unavailable to Student.
5. In the spring of 2022, Springfield submitted a portfolio appeal with Parent’s knowledge.
6. Between 2019 and 2023, Parent and/or her previous advocate filed seven Hearing Requests with the BSEA on behalf of Student (in addition to the instant matter), and she participated in two mediations.[[3]](#footnote-3) Two of the Decisions in Parent’s cases are pending before the Federal District Court, and a Decision on BSEA # 2309351 is pending before the BSEA. These prior hearings, as well as the two mediations which resulted in mediation agreements, may impact the viability of Student’s claims.

**LEGAL STANDARDS:**

The first two standards set forth below regarding “Motion to Dismiss” and “BSEA Jurisdiction” are taken *verbatim* from a previous *Ruling on a Motion to Dismiss* issued by this Hearing Officer on December 2, 2022, in BSEA #2303901, involving Student.

1. Motion to Dismiss:

In evaluating the Parties’ positions regarding this *Motion to Dismiss*, I take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff's favor.”[[4]](#footnote-4) *In Re: Zeke and Pembroke Public Schools*, BSEA #2300305 (Reichbach, 8/28/2022).

To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief…”.  *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

1. BSEA Jurisdiction:

20 U.S.C. § 1415(b)(6) establishes a state’s jurisdictional grant of authority to resolve special education matters raised within the two-year statute of limitations period filed by a parent/guardian or school district “with respect to any matter relating to the identification, evaluation, or educational placement of [a] child, or the provision of a free appropriate public education to such child.”[[5]](#footnote-5) *In Re: Zeke and Pembroke Public Schools*, BSEA #2300305 (Reichbach, 8/28/2022).

In Massachusetts, M.G.L. c. 71B § 2A and 2B provide for

…adjudicatory hearings, mediation and other forms of alternative dispute resolution …for 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 provision of a free and appropriate public education to the child arising under this chapter and regulations.

Pursuant to 603 CMR 28.08(3)(a), the applicable Massachusetts special education regulation, the BSEA is responsible for resolving disputes among parents, school districts, private schools and state agencies[[6]](#footnote-6). Said jurisdictional authority is exercised consistent with 34 CFR §300.154(a). Parents in Massachusetts may request hearings

…on any matter 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.[[7]](#footnote-7)

1. Statute of Limitations Applicable to BSEA Hearings:

The IDEA establishes a two-year statute of limitations for any party to file a due process hearing request. That is, a petitioner must initiate the request for a due process proceeding within two years of the date said party knew or should have known of the actions forming the basis of the hearing request[[8]](#footnote-8). There are two exceptions to the IDEA two-year limitation period, neither of which is applicable in the instant case.[[9]](#footnote-9) Massachusetts has adopted the federal two-year statute of limitations standard.[[10]](#footnote-10)

1. IDEA Eligibility Age Range*:*

Generally, 20 USC §1412(a)(1)(A) and (B) require that states provide a FAPE to students with disabilities ages three through 21years old as a condition of receiving federal IDEA funding.[[11]](#footnote-11)

MGL c. 71B, the Massachusetts special education statute, defines a “school aged child” as “any person of ages three through twenty-one who has not attained a high school diploma or its equivalent.”[[12]](#footnote-12) In so doing, Massachusetts extends eligibility to children under the age of 22 who have not received a high school diploma or its equivalent. A student’s entitlement however ends the day that the student reaches the age of 22. On a student’s 22nd birthday, the student ceases to be a “school aged child” within the meaning of the statute.[[13]](#footnote-13)

**DISCUSSION AND LEGAL CONCLUSIONS**:

Student’s Hearing Request alleges that Springfield violated MGL c. 140 section 119 by failing to take the necessary actions, including emergency regulations, to modify Student’s MCAS. According to Student, Chapter 140 of the Acts of 2003 amended the Massachusetts MCAS performance appeals process for students with disabilities, requiring that the superintendent in the particular school district (Springfield in the instant case) to file an appeal at the request of the parent or the student, if over 18 years old, once said parent or adult student consents.

Student further asserts that Springfield violated 603 CMR 30.05, MGL c.71B and Section 504 of the Rehabilitation Acts of 1973, statutes and regulations that impact a disabled individual’s MCAS graduation requirements. Student claims that Springfield’s Superintendent failed to address Parent’s performance appeal requests despite Student meeting the criteria for same.[[14]](#footnote-14)

Student noted that the superintendent’s MCAS Appeal is initiated “with the consent of the parent, guardian or [a] student who has reached the age of majority, if the student meets the eligibility criteria set forth” in paragraph (a) above. Student further asserts that “the commissioner may, for good cause, waive any of the eligibility criteria upon written request of the superintendent”, and since Springfield allegedly refused to meet with Student to discuss the MCAS Appeal, Student right to a FAPE was violated.

Student also argues that Springfield did not factor his college courses or other academic achievements made while he attended the AIC College Steps program, which also constituted a denial of FAPE.

In sum, Student’s Hearing Request appears to raise the following issues:

1. whether Springfield’s Superintendent’s failure to meet with Student to discuss the MCAS Appeal process denied Student a FAPE;
2. whether the Student was denied access to emergency regulations;
3. whether Springfield’s failure to factor in Student’s college courses while he attended the AIC College Steps program denied Student a FAPE; and,
4. whether Springfield’s Superintendent violated Student’s and Parent’s rights under the 14th Amendment of the United States Constitution by depriving Student of life, liberty or property without due process.[[15]](#footnote-15)

Student seeks an order that Springfield’s Superintendent file the MCAS Appeal and any other appeal necessary for Student to obtain his high school diploma. In the alternative, Student seeks funding for additional MCAS tutoring.

Springfield moves to dismiss Student’s Hearing Request on two grounds: a) the statute of limitations, and b) BSEA jurisdiction.

1. Statute of Limitations:

Springfield contends that application of the IDEA’s two-year statute of limitations significantly limits Student’s claims. Since Student’s Hearing Request was received on November 27, 2023, his claims may only go back to November 27 of 2021. In addition, given that Student turned 22 years old on April 6, 2022, his special education eligibility ended by operation of law. As such, any claim would have had to arise between November 27, 2021, and April 6, 2022, a period of just a little over four months, and all other claims arising outside this period must be dismissed.

Springfield is persuasive that the IDEA’s two-year statute of limitations, considered in tandem with his twenty-second birthday, limits Student’s claims to the period between November 27, 2021 and April 6, 2022. As such, Springfield’s Motion to Dismiss claims falling outside this period is **GRANTED** **WITH PREJUDICE**.

B. Jurisdictional Grounds:

Springfield argues that the BSEA’s limited jurisdiction prevents it from hearing and adjudicating claims over laws and regulations outside its jurisdictional authority. Therefore, the BSEA may not entertain claims pursuant to M.G.L. c. 140 s.119, 603 CMR 30.05, or claims involving the 14th Amendment of the United States Constitution.

I first turn to the BSEA’s jurisdiction over Student’s Constitutional claims.

Student’s claims regarding violations of the 14th Amendment to the Constitution fall outside the limited jurisdiction of the BSEA. Student’s claims in this regard involve deprivation of property and liberty, neither of which conforms to the statutory and regulatory language establishing the jurisdiction of the BSEA. BSEA disputes are limited to specific types of disputes as among parents, school districts, private schools, as well as state agencies that are responsible for the delivery of services to students. Student’s 14th Amendment violation claims do not involve disputes regarding the eligibility, evaluation, or placement of a child, the provision of a free appropriate public education to such child, or procedural protections for students with disabilities as among the parties enumerated above.[[16]](#footnote-16)

As Springfield is correct that nothing in the IDEA or Massachusetts special education law or regulations grant the BSEA authority to hear these claims, Springfield’s Motion to Dismiss in this regard is **GRANTED**, and Student’s 14th Amendment claims are **DISMISSED WITH PREJUDICE**.

Turning next to Student’s claims involving M.G.L. c. 140 s.119, 603 CMR 30.05, MCAS Performance Appeals, Springfield disputes both the BSEA’s jurisdiction to entertain claims pursuant to 603 CMR 30.05 and Student’s factual allegations that the District failed to complete MCAS performance appeals on his behalf.

Springfield correctly argues that 603 CMR 30.05 does not mandate that a superintendent complete a performance appeal in every situation, whether for a general education or eligible special education student. The regulation states, in pertinent part, that

[i]f the superintendent declines to file a performance appeal on behalf of a student, the student’s parent or guardian may appeal the superintendent’s decision to the school committee. If the school committee denies the request or takes no action on it within 30 days from the date it was submitted, and the student’s parent or guardian alleges that the superintendent acted for reasons unrelated to the student’s eligibility or academic achievement in not filing the performance appeal, the parent or guardian may ask the Commissioner to review the matter.

As to students with disabilities, the regulation specifically provides that

[t]he superintendent shall file a performance appeal on behalf of a student with a disability **upon the request of the student’s parent or guardian or the student who has reached 18 years of age**, provided the student meets the eligibility requirements listed in 603 CMR 30.05. [Emphasis supplied].

Consistent with the *Department of Elementary and Secondary Education MCAS Appeals Process*, there are two options falling under the Performance Appeal umbrella that relate specifically to special education students. Those are the “cohort appeal” and the “portfolio appeal”.

Springfield argues that in February of 2019, it offered to complete a cohort appeal for Student, who was at that time in twelfth grade, but Parent (who had educational decision-making for Student) refused to provide consent for the District to proceed with the appeal. Springfield further contends that Parent did not provide such consent as she wanted to extend Student’s eligibility for special education beyond twelfth grade until the age of 22 and thus the end of his eligibility. In 2021 Parent consented to submission of the cohort appeal and Springfield submitted it. The Department of Elementary and Secondary Education responded with “no determination”, because Student’s GPA was lower than the median of his cohort comparators, and therefore the cohort appeal was not available to Student. Moreover, Springfield asserts that in 2022, it submitted a portfolio appeal on behalf of Student.

Although the above recitation of facts and related argument as offered by Springfield may prove meritorious in a hearing on the merits, they may not be considered by the Hearing Officer in the limited context of a motion to dismiss, in which all averments in Student’s Hearing Request must be taken as true and interpreted in the light most favorable to him.

Lastly, Springfield seeks dismissal on the grounds that the BSEA cannot award the remedy sought by Parent; that is, that the Superintendent be ordered to file an appeal on behalf of Student or that it fund additional tutoring for Student.

Springfield is correct that neither the IDEA or Massachusetts special education laws or accompanying regulations grant the BSEA direct authority over 603 CMR 30.05. To the extent that Parent seeks an order that Springfield’s Superintendent file a performance appeal on behalf of Student, Springfield’s Motion to Dismiss is **GRANTED,** as the BSEA does not have jurisdiction to award the remedy sought. As such this claim is **DISMISSED WITH PREJUDICE.**

However, insofar as Student seeks remedies outside of the context of said regulation, namely, funding for a biology tutor to create a new cohort so that Student (who was on a diploma track during the period of entitlement) may obtain his high school diploma, it is possible that provision of a biology tutor may be a remedy available through the BSEA. This would require that Student demonstrate at Hearing that a biology tutor was required and not provided during his period of entitlement.

As stated above, consideration of these facts would not be appropriate in the context of a motion to dismiss, in which all averments in the Student’s Hearing Request must be taken as true and interpreted in the light most favorable to Student. Thus, at this juncture, it is premature for me to dismiss this claim in its entirety within the context of a motion to dismiss, as it is plausible that Student may be entitled to at least some of the remedies sought.

Furthermore, I take administrative notice of substantive and dispositive Rulings and Decisions on Parent’s/Student’s numerous previous BSEA cases, filed between 2019 and 2023. It would appear that some, if not all, of the issues raised by Student in this matter may have been addressed before. To the extent that Parent/ Student have had a prior opportunity to make any and all arguments to support their claims here raised regarding the performance appeal process, and to the extent that those issues/ claims may have already been heard and disposed of, Student would be barred from raising them in the instant case, pursuant to the doctrines of res-judicata and collateral estoppel.

Student’s Hearing Request also raises denial of FAPE allegations involving Springfield’s failure to pursue “emergency regulations” on his behalf. To the extent that the “emergency regulations” to which Student alludes involve provisions created during the COVID-19 emergency and its’ aftermath that were available to *all* students, special education and general education alike, these would fall outside the jurisdiction of the BSEA and would be amenable to a future motion to dismiss.

Lastly, to the extent that this Ruling does not dispose of all of Student’s claims as requested by Springfield, Springfield’s right to renew a request for dismissal of claims and/or for summary judgment is preserved.

Springfield’s Motion to Dismiss is **GRANTED in PART**, consistent with this Ruling.

**ORDER**

For the reasons set forth above:

1. Springfield’s Motion to Dismiss claims falling outside the two-year statute of limitations is **GRANTED WITH PREJUDICE**. Student’s viable claims must have had to arise during the period between November 27, 2021 and April 6, 2022.
2. Springfield’s Motion to Dismiss Student’s/Parent’s 14th Amendment claims is **GRANTED.** Student’s/ Parent’s 14th Amendment claims are **DISMISSED WITH PREJUDICE**.
3. Springfield’s Motion to Dismiss Student’s/Parent’s claim seeking that the BSEA order Springfield’s Superintendent to file a performance appeal on behalf of Student is **GRANTED,** as the BSEA does not have jurisdiction to award the remedy sought. As such this claim is **DISMISSED WITH PREJUDICE.**

By the Hearing Officer:

Rosa I. Figueroa

Dated: January 24, 2024

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 for review in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts. 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. Student’s Hearing Request did not provide Student’s actual birth date, and the District provided an erroneous date. [↑](#footnote-ref-1)
2. See Massachusetts DESE *Overview of the MCAS Performance Appeals Process*. [↑](#footnote-ref-2)
3. I take administrative notice of Hearing Request BSEA numbers: #2309351, # 2303901, # 2210887; # 2203555; # 2102164; # 2007894; # 2004776; and two mediation requests, BSEA # 2303020 and #2202851. Hearing Request BSEA #2303901 was dismissed by this Hearing Officer in December of 2022. [↑](#footnote-ref-3)
4. *Cf*. *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995). [↑](#footnote-ref-4)
5. See 34 CFR § 300.507(a)(1). [↑](#footnote-ref-5)
6. I note that the reference to “state agencies” is not a blank reference to *all* Massachusetts state agencies, but rather to those responsible for provision of services to children. [↑](#footnote-ref-6)
7. Parents may also request hearings involving alleged denials of a free, appropriate public education pursuant to Section 504 of the Rehabilitation Act of 1973, as set forth in 34 CFR §§104.31-104.39. [↑](#footnote-ref-7)
8. 20 USC 1415(f)(3)(C); 34 CFR 300.507(a)(2); 34 CFR 300.511(e). [↑](#footnote-ref-8)
9. The two exceptions involve situations in which a parent is prevented from filing a hearing request because of: “(i) specific misrepresentations by the [district] that it had resolved the problem forming the basis of the complaint; or (ii) the [district]’s withholding of information from the parent that was required … to be provided …”. 20 USC 1415(f)(3)(D); 34 CFR 300.511(f). [↑](#footnote-ref-9)
10. 603 CMR 28.01. [↑](#footnote-ref-10)
11. The exception is in instances where state law does not require provision of such education for children between the ages of three and five or 18 and 21. [↑](#footnote-ref-11)
12. MGL c. 71B, §1. [↑](#footnote-ref-12)
13. 20 USC 1412(a)(1)(B); 34 CFR 300.102(a)(1) and (a)(3); *see* M.G.L. c. 71B § 1; 603 CMR 28.02. [↑](#footnote-ref-13)
14. According to Student, the MCAS appeal criteria requires that:

    1. The child has taken the grade 10 MCAS at least 3 times in each subject area required by the board of education for the competency determination and did not achieve a passing score or submitted a portfolio assessment through the MCAS Alternative Assessment at least 2 times without being granted a competency determination;
    2. The child has maintained an adequate attendance level as established by the department of education or the child’s days of absences from school in excess of the number allowed by the department are excused;
    3. The child has demonstrated participation in academic support services made available and accessible by or approved by the school district under an individual student success plan, the district has never offered or informed [parent] or [student] about his option for an individual success plan, [which] is not the same as an IEP, or under any other plan designed to strengthen the student’s knowledge and skills in the subject at issue, or the child’s lack of participation in available academic support services has been related to the child’s disability.

    [↑](#footnote-ref-14)
15. According to Student, this case involves “property” (the diploma) and “liberty” because in failing to maintain Student’s good name Springfield injured his reputation. [↑](#footnote-ref-15)
16. See 34 CFR § 300.507(a)(1); M.G.L. c. 71B § 2B; 603 CMR 28.08(3)(a). [↑](#footnote-ref-16)