**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Milton Public Schools BSEA # 2506739**

**RULING ON MILTON PUBLIC SCHOOLS’ MOTION TO DISMISS**

*PROCEDURAL HISTORY*

On January 10, 2025, Parent filed a Hearing Request in the above matter. On January 23, 2025, Milton Public Schools (hereafter, “Milton”) filed its Response to Parent’s Hearing Request and a Motion to Dismiss*.* (*Motion*) The Parties agreed to extend the time for Parent to file a response, and on February 21, 2025, Parent filed her Response. Milton filed an Addendum in Response to Parent’s Opposition on February 25, 2025.

Milton seeks dismissal of claims outside the jurisdiction of the BSEA, to wit: Parent’s request that the BSEA determine that 105 CMR 210.004(B)(4), which prohibits non-medical staff from administering insulin, violates Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and ordering Milton to train and delegate diabetes related care to Student’s non-medical classroom staff, which circumvents state law.

Neither party has requested a hearing on the *Motion*. Because I find that 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 ALLOWED in part.

*RELEVANT FACTS***:**

For the purposes of this *Motion*, I must take as true the assertions set out in the Parent’s pleadings. [[1]](#footnote-1)

Student is a six-year-old first grade student within the Milton Public Schools, supported through a 504-plan due to type 1 diabetes. Student wears a pump on his body to administer insulin. The pump is controlled by a separate device, a continuous glucose monitor (CGM), which Student carries in his backpack. The CGM monitors his blood sugar levels and sends the readings to a smart device. The CGM sounds an audible alarm when Student’s blood sugar levels are too high or low and can send a notification to an app. (Parent’s Hearing Request)

Student’s 504 Plan for the period from August 31 2023 through June 8, 2024, required the nurse to provide Student all his routine diabetes-related care, including scheduled visits to the nurse for “blood sugar maintenance” and when his CGM device alarms to indicate blood sugar levels out of range. (Exhibit A) Milton also required Student to visit the nurse at the beginning and end of every school day. Thus, on a typical day Student visited the nurse four times per day: upon arrival at school (8:45 a.m.); to receive insulin before his snack (10:30); to receive insulin before lunch (1:00 p.m.); and before dismissal (2:45 p.m.). He also went to the nurse’s office once per week before gym class. (Parent’s Hearing Request)

In spring 2024, Mother requested that the school nurse set up a device to receive alerts from Student’s CGM so that the nurse could remotely monitor his blood sugar levels and classroom staff could provide Student with snacks as needed in the classroom instead of requiring Student to go to her office for snacks. (Parent’s Hearing Request)

In a letter dated August 13, 2024, Student’s endocrinologist, Dr. Katharine Garvey, wrote a indicated that she believed it was imperative for the school nurse to follow Student’s CGM at school in order to provide Student “a maximally inclusive learning environment with minimal interruptions.” (See Exhibit B, Parent’s Hearing Request) Milton informed Parent that it would follow the doctor’s orders and use the CGM remote app. (Parent’s Hearing Request)

Student continues to be required to report to the nurse’s office multiple times daily for routine diabetes care, such as monitoring his blood sugar levels; giving him snacks as needed; and administering insulin as required. Milton requires Student to report to the nurse’s office every morning for a “check” of his medical devices and at the end of the day to check his blood glucose levels. (Parent’s Hearing Request) Dr. Garvey’s Orders, dated January 2, 2025, include, “Student does not need to come to the nurse at arrival or dismissal if glucose value is in-range.” (Parent’s Hearing Request, Exhibit C)

During an October 10, 2024 telephone call with Parent, Student’s first grade teacher estimated that Student was missing 40% of class on a good day and 60% of class time on a bad day. She later clarified that 60-70% was “pretty high and inaccurate” and that 40% of class time was more accurate. She noted that the nurse would have more accurate data and encouraged Parent to reach out to her for more information. (Parent’s Hearing Request, Exh. D)

Student has expressed frustration about having to leave his classroom and regular schedule to go to the nurse’s office for care, telling his mother that he is upset about missing certain classes and activities. Student’s teacher told Mother that Student resists going to the nurse and says that the nurse makes him late every day. Student’s teacher has reported Student’s increased behavioral dysregulation, and staff have begun collecting daily behavioral data on him. (Parent’s Hearing Request)

*Parent’s Position*

Parent alleges that Student is losing significant amounts of educational time due to Milton’s insistence on unnecessary check-ins with the school nurse; its refusal to allow routine diabetes related care to be performed by non-medical personnel; and its practice of requiring Student to go to the nurse’s office for blood sugar monitoring and treatment. Dr. Garvey has recommended that Student’s diabetes care be provided in a “maximally inclusive learning environment with minimal interruptions.” Parent further asserts it is not necessary for a nurse to check Student’s medical devices. Finally, Parent argues that non-medical staff are capable of monitoring Student’s blood glucose levels and giving him snacks when his blood sugar drops low. Parent acknowledges that 105 CMR 210.004(B)(4) does not permit the delegation of the administration of insulin to non-medical personnel. However, Parent notes that the American Diabetes Association and the National Diabetes Education Program have taken the position that delegation of the administration of insulin to non-medical school staff can be safe. Parent further argues, “If Section 504 requires the delegation of the administration of insulin to assure a FAPE for a student with a disability, the U.S. Constitution’s Supremacy Clause requires the state regulation to give way.” U.S. Const. Art VI, § 2; *Astralis Condo. Ass’n v. HUD*, 620 F.3d 62, 69 (1st Cir. 2010) Parent concludes that if Milton cannot staff the administration of Student’s insulin by a nurse going to Student’s classroom, then Section 504 and Title II of the Americans with Disabilities Act supersede state regulation and require Milton to allow non-medical staff to administer insulin.

*Milton’s Position*

Parent has asserted claims that are not within the jurisdiction of the BSEA. Parent asks the BSEA to determine that 105 CMR 210.004(B)(4), which prohibits non-medical staff from administering insulin violates Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and to circumvent state law by ordering the District to train and delegate diabetes related care to Student’s non-medical classroom staff. Parent’s claims fall outside of the scope of the BSEA’s jurisdiction because such claims are precluded by judicial review and do not fall under G.L. c. 71B, the IDEA, or Section 504. Thus, Parent’s claims must be dismissed with prejudice as a matter of law.

*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.”[[2]](#footnote-2) 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.”[[3]](#footnote-3) These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”[[4]](#footnote-4)

*JURISDICTION OF THE**BSEA*

The BSEA has limited subject matter jurisdiction. 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.”[[5]](#footnote-5) In Massachusetts, a parent or a school district, “may request mediation and/or a hearing at any time on any matter[[6]](#footnote-6) 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) 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….”[[8]](#footnote-8) 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.”[[9]](#footnote-9)

*APPLICATION OF LEGAL STANDARDS*:

In evaluating the *Motion to Dismiss*under the legal standards set forth above, I take as true allegations, as well as any inferences that may be drawn from them, in the Parent’s favor, and deny dismissal if these allegations plausibly suggest an entitlement to relief.[[10]](#footnote-10)

Here, I find that a determination as to whether Milton violates Section 504 and discriminates against Student by virtue of complying with a state regulation, 105 CMR 210.004(b)(4), is outside the limited jurisdiction of the BSEA. While clearly, “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….”,[[11]](#footnote-11)Parent’s request that the BSEA determine whether 504 supersedes 105 CMR 210.004(B) falls out of the BSEA’s limited authority to hear issues involving the FAPE guarantee of Section 504. As argued by Milton, this case is analogous to the case of *Sandwich Public Schools and the Amego School*, BSEA #2109444 (Putney-Yaceshyn, 2021) In that case, the evidence showed that the student required medical marijuana to access the curriculum in a school setting. Despite this finding, the undersigned ruled, “[The] current state law precludes the BSEA from ordering Student to receive the medication he requires to benefit from his proposed educational program.”  *Id*.

I further concluded,

I am unable to make a determination that providing Student with medical marijuana at a private school is a reasonable accommodation within the context of Section 504. *An accommodation that requires circumvention of current Massachusetts law cannot be construed as reasonable*. [Emphasis added] Similarly, I am unable to order Sandwich to include the use of medical marijuana in Student’s IEP, as neither Sandwich nor Amego could legally implement the IEP. BSEA does not have the authority to order a district to write an IEP which requires the administration of medical marijuana on school premises when M.G.L. C. 94G, § 2(d)(3) states that possession or consumption of marijuana on the grounds of or within a public or private school is not authorized by the Medical Marijuana law. *Id.*

As in Amego, Parent in the current case is seeking an Order requiring the District to circumvent state law, i.e., delegate the administration of insulin to non-medical staff. The BSEA simply does not have the authority to order Milton to act in contravention of state law or to make a determination regarding whether the state law conflicts with section 504. Even viewing the facts in the light most favorable to the Parent, there is no relief that the BSEA could order with respect to this claim, and, thus, it is *Dismissed with Prejudice*.

Parent’s request for orders mandating the training of and allowance of non-medical classroom staff to provide diabetes-related care, is not proscribed in 105 CMR 210.004(B)(4), as is the administration of insulin. There is no similar regulation prohibiting the delegation of diabetes related care such as checking blood glucose levels and providing snacks. Further, Milton’s argument that it is precluded from delegating any diabetes related care to non-medical staff by the *Massachusetts Guide for Managing Diabetes in Schools* (“The Guide”)[[12]](#footnote-12) is not persuasive. Although The Guide states that school nurses should “assume responsibility for the management of the care of the student with diabetes in the school setting” The Guide does not carry the force of a regulation and provides only guidance. For this reason, Parent has stated a claim upon which relief could be granted by the BSEA.

**ORDER**:

The District’s *Motion to Dismiss* is ALLOWED in part. Specifically, Parent’s claim that Milton’s adherence to 105 CMR 210.004(B)(4) violates section 504 and thus denies Student a FAPE is hereby **dismissed with prejudice.** Parent’s remaining claims may proceed.

So Ordered by the Hearing Officer,

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Catherine M. Putney-Yaceshyn

Dated: April 10, 2025

COMMONWEALTH OF MASSACHUSETTS

BUREAU OF SPECIAL EDUCATION APPEALS

EFFECT OF BUREAU DECISION AND RIGHTS OF APPEAL

# Effect of the Decision

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. Accordingly, the Bureau cannot permit motions to reconsider or to re-open a Bureau decision once it is issued. Bureau decisions are final decisions subject only to judicial 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. Rather, a party seeking to stay the decision of the Bureau must 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,” during the pendency of any judicial appeal of the Bureau decision, 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 during the pendency of judicial proceedings must seek a preliminary injunction ordering such a change in placement from the court having jurisdiction over the appeal. *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 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 decision of 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 of the Bureau decision. 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. See *Blank v. Chelmsford Ob/Gyn, P.C*., 420 Mass. 404, 407 (1995). [↑](#footnote-ref-1)
2. *Iannacchino v. Ford Motor Co.,* 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). [↑](#footnote-ref-2)
3. *Blank v. Chelmsford Ob/Gyn, P.C*., 420 Mass. 404, 407 (1995). [↑](#footnote-ref-3)
4. *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). [↑](#footnote-ref-4)
5. See 34 C.F.R. §300.507(a)(1). [↑](#footnote-ref-5)
6. Limited exceptions exist that are not here applicable. [↑](#footnote-ref-6)
7. 603 CMR 28.08(3)(a). [↑](#footnote-ref-7)
8. See 29 U.S.C. 794 (Section 504 of Rehabilitation Act); 34 CFR 104, et seq. [↑](#footnote-ref-8)
9. In Re: Georgetown Pub. Sch.*, BSEA #1405352 (Berman, 2014).* [↑](#footnote-ref-9)
10. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-10)
11. See 29 U.S.C. 794 (Section 504 of Rehabilitation Act); 34 CFR 104, et seq. [↑](#footnote-ref-11)
12. I take administrative notice that this guide was developed by the Department of Elementary and Secondary Education and the Department of Public Health “to assist schools in developing and implementing policies and comprehensive protocols for care of students with diabetes”. [↑](#footnote-ref-12)