**COMMONWEALTH OF MASSACHUSETTS**

***Division of Administrative Law Appeals***

**Bureau of Special Education Appeals**

**In Re**: Marshfield Public Schools v. **BSEA #** 2507398

 Student

### **Corrected Ruling on Parents’ Motion to Dismiss and Other Orders**

On January 23, 2025, Marshfield Public Schools (Marshfield or District) filed a Hearing Request in the above-referenced matter seeking a finding that the proposed IEP and day placement at the South Shore Collaborative provides Student with a free and appropriate public education (FAPE) in the least restrictive environment (LRE).

On January 27, 2025, Parents[[1]](#footnote-1) filed a response in which they objected to the District’s Hearing Request and moved to dismiss it with prejudice.

Parents’ submission contained additional challenges, to wit: that the overarching issue of Student’s receipt of FAPE is really a dispute over Home Hospital Forms consistent with 603 28.03(3)(c); that the Hearing Request violates Rule 1C of the *Hearing Rules for Special Education Appeals* (*Hearing Rules*) because it seeks relief for a period outside of the IDEA’s two-year statute of limitations; and that the District’s filing of a Hearing Request is designed to harass Parents and constitutes an abuse of process.

Parents further state that if the case is not dismissed, they will seek enforcement of the following BSEA *Hearing* *Rules*: Rule 1.F. (governing Resolution Sessions), Rule X. A.1 (requiring provision of a list of impartial hearing officers at the BSEA), Rule X. B.1 (for Student to be present at the Hearing), Rule X. B.2 (for the Hearing to be open to the public), Rule X. B.3 (ensuring Parents’ receipt of copy of a record of the Hearing, the findings of fact and decision at no cost), and Rule X. B.4 (stating that Parents have a right to receive a copy of Student’s record). Additionally, Parents request that the Hearing Officer schedule a hearing on their *Motion* and convene a Pre-hearing Conference. Parents further request various accommodations[[2]](#footnote-2) for the Hearing. Lastly, Parents requested a postponement of the initial Hearing date, which request was granted. (By agreement of the Parties, the Hearing will proceed on April 3 and 4, 2025.)

On February 11, 2025, Parents supplemented their *Motion to Dismiss With Prejudice*. In their supplement, Parents elaborated on their claim that that the case be dismissed as untimely, as it exceeded the two-year limit under the statute of limitations, and that the District cannot claim either exception to the statute of limitations is applicable and therefore should not be allowed to proceed. Specifically, Parents reasoned that the District failed to file a Hearing Request within two years from the date in which Marshfield became aware that Student required home/ hospital education, and left the home to access therapeutic and medical services. Moreover, Parents argued that Marshfield is “complicit” in Student’s leaving the house to attend therapeutic activities “by the District’s assigned academic tutor employee, under the full knowledge of the District Staff, dating back to the hiring and assignment of this academic tutor on April 12, 2022”.

Parents further assert that Marshfield made claims similar to those in the instant case in a previous action, BSEA #2310789, which the District withdrew on March 1, 2024 and is avoiding responsibilities consistent with a mediation agreement dated June 27, 2024. Parents assert that the District should not be allowed to circumvent a physician’s statement that Student requires home educational services. Lastly, Parents conclude that, in light of the foregoing, the District’s case should be dismissed with prejudice.

On February 12, 2025, Marshfield filed an *Opposition* *to Parents’* *Supplemental Motion to* *Dismiss* and Parents’ initial submission of January 27, 2025,responding to the District’s Hearing Request. Marshfield asserts that its claims are timely and argue that Parents misunderstand the legal parameters of the statute of limitations, and they fail to state a legal basis for dismissal. The District asserts that its Hearing Request seeks to ensure provision of a FAPE to a disabled student in the LRE, and notes that the issue presented and relief sought fall squarely within the jurisdiction of the BSEA. The District argues that in the context of *Parents’* *Motion to Dismiss*, all averments in the Hearing Request must be viewed in the light most favorable to Marshfield and all inferences must be drawn in its favor. Thus, Parents’ *Motion to Dismiss* must be denied.

Thereafter, on February 13, 2025, Parents filed a *Motion to Suppress and Censure/ Motion* *to Preclude Use of BSEA Submitted Medical Report in IEP Team Meeting Without Parental Consent.* Specifically, Parents sought to prevent use of a medical report prepared by Dr. Katrina Boyer on April 30, 2024, at any Team meeting or for the purpose of educational planning for Student. Parents further objected to distribution of this report to “multiple individuals” without express parental consent in contravention of FERPA and multiple IDEA safeguard protections. Parents seek an order preventing the District from referencing, relying on or using the report to modify Student’s IEP and seek its removal from any file in Marshfield’s possession pursuant to Rule IX.B.15[[3]](#footnote-3) *of the Hearing Rules for Special Education Appeals* (the rule delineating the powers and duties of a BSEA hearing officer).

On February 14, 2025, the District filed an *Opposition to Parents’ Motion To Preclude Use of BSEA Submitted Medical Report in IEP Team Meeting Without Parental Consent* asserting Parents’ misapplication of rules and regulations.

This Ruling addresses the Parties’ submissions as described *supra*. Parents’ request for a hearing on their *Motion to Dismiss* is **DENIED** as a hearing would not advance the undersigned Hearing Officer’s understanding of the issues.

**Background**:

Student is an 18-year-old eligible student who resides with Parents in Marshfield, Massachusetts. She presents with multiple, significant disabilities including “autism, severedevelopmental delays, visual impairment (legally blind), health impairments, neurological impairments, communication and language delays, and motor issues at least partially contributed to by hypotonia” in addition to other medical impairments. Student also “exhibits challenging behaviors including severe screen addiction which greatly limits her time on tasks” and seeks “constant video or auditory input across almost all activities.” (Marshfield Hearing Request).

Since February of 2022, Student has received educational services through nine separate consecutive home hospital forms, including one of January 25, 2024, calling for Student to continue receiving educational services in the home for an indeterminate period of time. The District is confused by this recommendation because Student accesses therapeutic and medical services and activities outside her home including: “specialized gym, equine therapy, vocational/ horticultural opportunities, and African drumming” demonstrating her ability to access her education outside the home.

Over the past several years Parents and the District have participated in multiple Team meetings, two DESE Problem Resolution complaints, a prior hearing request, an unsuccessful BSEA Settlement Conference, two facilitated team meetings, mediation, and SpedEx consultation. Despite all of the preceding, Parents and the District have been unable to reach agreement as to what constitutes FAPE in the LRE for Student.

Marshfield has proposed a day school placement for Student while Parents seek continued home/ hospital education. The District challenges Student’s physician letter of January 25, 2024, calling for a “home-based program of educational services, without any anticipated return to school”, arguing that it is not possible for the District to comply with Parents’ continually changing demands and a previous mediation agreement. Marshfield further contends that more importantly, the current combination of services she is receiving fails to provide Student with a FAPE in the LRE.

Following completion of a comprehensive educational evaluation in December of 2023, the District offered Student IEPs for the periods from 12/20/23 to 12/19/24 and 11/25/24 to 11/24/25 proposing a day placement at the South Shore Educational Collaborative (The Collaborative) in Hingham, Massachusetts.

**Legal Standards**:

1. Motion to Dismiss:

Rule XVII (A) and (B) of the BSEA Hearing Rules for Special Education Appeals and the *Standard Rules of Adjudicatory Practice and Procedure[[4]](#footnote-4)*, at 801 CMR 1.01(7)(g)(3), authorize BSEA hearing officers to consider and allow a motion to dismiss when the party requesting the hearing , herein the District, fails to state a claim upon which relief can be granted. These rules are analogous to Rule 12(b)(6) of the Federal and Massachusetts Rules of Civil Procedure. Although not strictly bound by these Rules, BSEA hearing officers are guided by the standards used by courts when deciding motions to dismiss for failure to state a claim upon which relief can be granted.

To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”[[5]](#footnote-5) In evaluating a motion to dismiss, 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.”[[6]](#footnote-6)  If the pleadings so viewed fail to support a plausible claim for relief, the case may be dismissed.[[7]](#footnote-7) Accepting as true the allegations of the complaint is inapplicable to legal conclusions.[[8]](#footnote-8) To survive dismissal, the “[f]actual allegations must be enough to raise a right to relief above the speculative level.”[[9]](#footnote-9)

In the context of a BSEA hearing, after taking as truethe allegations raised in the hearing request, if the hearing officer finds the party requesting the hearing can prove no set of facts entitling that party to any of the types of relief that may be granted through the BSEA (consistent with its limited grant of authority), the hearing request must be dismissed.

1. Statute of Limitations:

20 USC §1415 (f)(3)(C) and (D), establishes a two-year statute of limitations in the context of special education cases, unless one of two exceptions is met. Consistent with the IDEA and MGL c. 61B, Rule 1 C. of the *Hearing Rules for Special Education Appeals* provide that,

A parent or agency shall request an impartial due process hearing within two (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. This timeline does not apply if a parent was prevented from requesting a hearing due to either specific misrepresentations by the school district that it had resolved the problem forming the basis of the hearing request or the school district’s withholding of information from that parent that was required to be provided under federal law.

1. Resolution Session:

The IDEA establishes a thirty-day resolution period in every hearing request initiated by a parent, before the parent may proceed to a hearing. 28 USC §1415(f)(1)(B)(i) and (ii). The resolution session must be convened by the school district within fifteen calendar days of the date on which the parent’s hearing request is received, and must include relevant members of the student’s IEP Team who possess knowledge of the facts stated in the hearing request. In the alternative, the parties may agree to participate in a mediation instead of a resolution session or they may notify the BSEA in writing that the resolution session is waived. As set forth in Rule 1.F of the *Hearing Rules for Special Education Appeals*, footnote #5,

If, for reasons other than a parent’s failure to participate, the school district fails to convene a resolution meeting within fifteen calendar days of receipt of the hearing request, it shall be deemed to have waived the resolution session, and the hearing may occur.

However, if the school district attempts to convene a resolution session within fifteen days of the date of receipt of the hearing request and the parent refuses to participate, the hearing will be delayed.

The resolution session requirement only applies to due process hearings initiated by parents. There is no such requirement in cases where a school district initiates the hearing request. Therefore, Parents’ argument that the District was remiss in its obligation to convene a resolution session in the instant matter is inapplicable in the instant case as the hearing request was initiated by Marshfield.

**Discussion**:

1. Motion to Dismiss with Prejudice:

The instant matter involves Marshfield’s request for a determination that the program and placement it has offered Student at The Collaborative will provide her with a FAPE in the LRE with appropriate peers, qualified staff, consistency and responsible oversight by the District. Relying on a series of prior home-hospital physician forms recommending that Student’s education be provided outside of the school setting, Parents dispute the District’s proposed IEP and placement.

In support of the instant *Motion*, while Parents cite a plethora of state and federal special education laws and rules, they do not provide sufficient or persuasive support for their position.

Parents correctly note that the IDEA establishes a two-year statute of limitations unless a parent or an agency can show that one of the two exceptions to the statute of limitations applies. See 20 USC §1415 (f)(3)(C) and (D)[[10]](#footnote-10). Relying on this statute of limitations, Parents reason that since the District first received medical information supporting home-hospital education for Student in or about October 2022, their claim, now over two years old, is time-barred.

Parents’ assertions that the District should have proceeded to Hearing in 2022 when the District first learned of Parents’ request for home/ hospital instruction for Student is misplaced, and demonstrates a lack of understanding of the applicable statutes and regulations. Marshfield is not seeking “relief” dating back to 2022. Rather, the District asserts the appropriateness of the IEPs covering the periods from 12/20/2023-12/19/2024 and 11/25/24-11/24/25, as well as the proposed day placement at the South Shore Educational Collaborative. As such, the District challenges Parents’ position that Student has needed continued home-based instruction after January 25, 2024, or that she continues to require home-based instruction indefinitely. Given that its Hearing Request was received on January 23, 2025, the District’s claims fall squarely withing the IDEA’s two-years statute of limitations.

In the context of a motion to dismiss the Hearing Officer must accept all factual allegations in the District’s complaint as true and view them in the light most favorable to Marshfield. In doing so, the case may only be dismissed if Marshfield’s complaint states no plausible form of relief, something Parents have failed to demonstrate here. Marshfield is correct that at a hearing on the merits the District must present sufficient evidence to support its position that Student requires a structured educational program delivered in a setting such as the Collaborative program it proposes, in order to receive a FAPE in the least restrictive environment appropriate to meet her needs. , Parents may present evidence at a hearing on the merits in support of their educational preferences for Student.

The District is persuasive that it has raised a timely and plausible claim for relief that is properly before the BSEA. As such, Parents’ *Motion to Dismiss* is **DENIED**.

Further Parents offer no support for the claim that the District’s Hearing Request is designed to harass them or that it constitutes abuse of power. To the extent that this allegation is meant to support Parents’ *Motion to Dismiss* on this basis, their request is **DENIED**.

In their *Motion to Dismiss*, Parents request that if the *Motion* is denied, that the District be directed to convene a resolution session, however, as discussed above, the IDEA imposes no such requirement on a *school-initiated* hearing request. The requirement to hold a resolution session prior to proceeding to hearing exists only in parent-initiated hearing requests[[11]](#footnote-11), and is inapplicable in the instant matter, which was initiated by Marshfield. If the Parties voluntarily opt to hold an informal meeting to resolve their dispute or participate in a mediation prior to hearing, they certainly may do so. Parents’ *Motion* that Marshfield be ordered to hold a resolution session is **DENIED**. The Parties’ request to convene a pre-hearing conference is **GRANTED**.[[12]](#footnote-12)

1. Motion to Suppress and Censure/ Motion to Preclude Use of BSEA Submitted Medical Report in IEP Team Meeting Without Parental Consent

Parents seek to prevent the District from using a 2024 Children’s Hospital neuropsychological report they released in the context of the instant BSEA matter, and further allege that Marshfield released the report to third parties without parental consent. Parents seek imposition of sanctions against the District for this alleged transgression, which Marshfield vehemently denies.

On or about February 9, 2025, Parents submitted a request for accommodations to the BSEA and attached a copy of the report of a Children’s Hospital neuropsychological assessment conducted in April 2024 by Katrina Boyer, PhD, ABPP-CN. Thereafter, on February 13, 2025, Parents filed a *Motion to Suppress and Censure/ Motion to Preclude Use of BSEA Submitted Medical Report in IEP Team Meeting Without Parental Consent (Motion to Suppress and Censure)*, seeking to preclude the use of said report at any Team meeting without express parental consent.

Marshfield argued that Parents’ *Motion to Suppress and Censure*  in effect seeks to prevent the District from fulfilling its mandate to convene a student’s Team within ten school days from the date of receipt of an outside report to consider said independent evaluation consistent with 603 CMR 28.04(5)(f).[[13]](#footnote-13) Moreover, Marshfield was unclear as to why Parents sought to prevent discussion of Dr. Boyer’s report since they would then be prevented from introducing said report as evidence at a hearing. Marshfield refused to “accede to Parents’ demand to overlook mandatory education process in this instance or at any other time”, requested denial of Parents’ *Motion to Suppress and Censor,* and requested that the BSEA caution Parents against filing similar frivolous motions going forward.

The District is correct that consistent with federal and state mandates regarding convening of Team meetings and applicable timelines to do so, it is obligated to convene a student’s Team within ten school days from the date of receipt of an outside report to consider said independent evaluation. Parents’ attempts to shield a highly relevant report which they themselves placed front and center in this dispute, would require Marshfield to obviate federal and state procedural mandates designed to ensure that IEPs and placements recommended for students are appropriate, and that IEPs are developed in consideration of current, relevant student information. The District is correct that it cannot be ordered by this forum to ignore relevant current information on Student or its federal and state obligations. Moreover, this forum cannot ignore said relevant information as it is called to determine the appropriateness of Marshfield’s proposed program and placement for Student. In this context, Parents’ request for sanctions against the District for fulfilling its mandates and/ or in response to unsubstantiated claims[[14]](#footnote-14) involving release of information to alleged third parties, misapplies state and federal student confidentiality laws.

Parents’ *Motion to Censure and Suppress* is **DENIED** as is Parents’ request to impose sanctions on the District.

Lastly, while at this juncture the undersigned Hearing Officer declines the District’s invitation to order Parent (who is pro-se) to cease filing motions that appear to be frivolous, the Parties are warned that engaging in improper, frivolous, unreasonable or unfounded litigation designed to harass, delay or increase the cost of litigation may result in sanctions consistent with 20 USCS $§$1415 (h)(i)(3)(B) *et seq*. by a court of competent jurisdiction.

**ORDERS**:

1. Parents’ *Motion to Dismiss with Prejudice* is **DENIED**.
2. Parents’ *Motion to Suppress/ Censure*is **DENIED**.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Rosa I. Figueroa

Dated: March 20, 2025

1. Father is Student’s legal guardian. [↑](#footnote-ref-1)
2. Consistent with DALA/ BSEA policy, Parents were directed to file their request for accommodations with the ADA Coordinator, Mr. James Rooney, First Magistrate at the Division of Administrative Law Appeals. Parent did so on February 10, 2025. [↑](#footnote-ref-2)
3. This rule authorizes a hearing officer to “[c]ensure, reprimand, or otherwise ensure that all participants conduct themselves in an appropriate manner”. [↑](#footnote-ref-3)
4. 801 Code Mass Regs 1.01. [↑](#footnote-ref-4)
5. Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008) (quotingBell Atl. Corp. v. Twombly*,* 550 U.S. 544, 557 (2007)). [↑](#footnote-ref-5)
6. Blank v. Chelmsford Ob/Gyn.C*.,* 420 Mass. 404, 407 (1995). [↑](#footnote-ref-6)
7. *Tomaselli v. Beaulieu*, No. 08-CV-10666-PBS, 2010WL2105347, at 3\* (D. Mass. May 7, 2010); *Gargano v. Liberty Intern. Underwriters*, Inc. 572 F. 3d 45, 49 (1st Cir. 2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559, 127 S.Ct. 1955, 1967(2007)); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009) (discussing the plausibility standard). [↑](#footnote-ref-7)
8. *Ashcroft*, 556 U.S. at 678, 129 S.Ct. at 1949 (citing *Twombly*, 550 U.S. at 555, 127 S.Ct. at 1955). [↑](#footnote-ref-8)
9. Golchin v. Liberty Mut. Ins. Co.*,* 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). [↑](#footnote-ref-9)
10. “Timeline for requesting 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 USC §§1411 et seq.], in such time as the State law allows.” Subsection (D) describes the exceptions to the statute of limitations not applicable here. [↑](#footnote-ref-10)
11. See 20 USC §1415(f)(1)(B)(i) and (ii). [↑](#footnote-ref-11)
12. A pre-hearing conference has been scheduled via separate order. [↑](#footnote-ref-12)
13. Within ten-school days from the time the school district receives the report of the independent educational evaluation, the Team shall reconvene and consider the independent education evaluation and whether a new or amended IEP is appropriate. 603 CMR 28.04(5)(f). [↑](#footnote-ref-13)
14. At Hearing Parents may present evidence regarding allegations that the District released information about Student, specifically Dr. Boyer’s report, to third parties; that is, to individuals who are not employees of the District and/ or not directly connected to this matter. [↑](#footnote-ref-14)