**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Acton-Boxborough Regional School District BSEA # 2509385**

**RULING ON ACTON-BOXBOROUGH REGIONAL SCHOOL DISTRICT’S**

**MOTION TO DISMISS**

This matter comes before the Hearing Officer on the Acton Boxborough Regional School District’s *Motion to Dismiss* (*Motion*) filed on April 25, 2025,[[1]](#footnote-1) in which Acton-Boxborough Regional School District (ABRSD or the District) asserts that the Hearing Request in the instant matter must be dismissed as Parent has failed to state a claim upon which relief may be granted. Specifically, ABRSD argues that the above-referenced matter was brought before the Bureau of Special Education Appeals (“BSEA”) by Parent because he was seeking a “placement [in a] family-driven program and redirecting the corresponding school district funds to it.” It is the District’s position that the BSEA does not have the authority to award the relief sought by Parent, because the family-driven program is not approved by DESE; Parent has not unilaterally placed Student; Parent is not alleging the proposed IEP is inappropriate; and no expert testimony is being proffered to support Parent’s requested relief. [[2]](#footnote-2)

Parent, who is *pro se*, responded via email on April 25, 2025, objecting to the dismissal.

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 DENIED.

1. **PROCEDURAL HISTORY AND RELEVANT FACTS:**

In this Ruling, I take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in [ABRSD’s] favor” as I am required to do.[[3]](#footnote-3) These facts are subject to revision in future rulings.

1. Student is a 21-year old[[4]](#footnote-4) resident of Acton, Massachusetts. She is diagnosed with Autism Spectrum Disorder, ADHD, anxiety and other neurological disorders. Student attends the Post High School program at Milestones Day School.
2. At an undisclosed date, Student’s placement at Milestones was rejected by Parents. “Even long before this, parents asked [the] school district [] to consider a better placement [for] [Student].” Parents also objected to Milestones’s “use of suspension [and] regular [use of an] isolation room.”
3. On March 7, 2025, Parent filed the instant appeal, asserting, in part, that Student’s current placement at Milestones was inappropriate and not reasonably calculated to allow her to make meaningful progress. Moreover, the program has harmed Student’s self-esteem. Parent alleges that he has “asked [the] school district [] to consider a better placement where [Student] would be welcomed and properly supported. However, these [] requests are [] ignored.” According to Parent, “[w]ith 4 months of the district support remaining, the best and practically only feasible option is to change [Student’s] placement to the family-driven program and redirecting the corresponding school district funds to it. Over [the] years [Student’s] family demonstrated abilities [sic] to successfully help [Student] in getting education, building many occupational and vocational skills when [the] Milestones program refused to work on them. The family-based program will let [Student] recover and gain critically needed transitional skills in the remaining months of the district support.”

**II. LEGAL STANDARDS AND APPLICATION OF LEGAL STANDARDS:**

In applying the standards set out below, I bear in mind that complaints filed by pro se parties are to be construed liberally.[[5]](#footnote-5) As explained by the First Circuit Court of Appeals, “[t]he policy behind affording pro se plaintiffs liberal interpretation is that if they present sufficient facts [to state a claim], the court may intuit the correct cause of action, even if it was imperfectly pled.”[[6]](#footnote-6) This principle aligns with “[o]ur judicial system [, which] zealously guards the attempts of pro se litigants on their own behalf” while not ignoring the need for compliance with procedural and substantive law.[[7]](#footnote-7)

1. *Motions to Dismiss*

Pursuant to Rule XVII A and B of the Hearing Rules and 801 CMR 1.01(7)(g)(3)[[8]](#footnote-8), 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. To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”[[9]](#footnote-9) 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.”[[10]](#footnote-10) These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”[[11]](#footnote-11)

1. *Jurisdiction of the BSEA*

20 U.S.C. § 1415(b)(6) grants the BSEA jurisdiction over timely complaints filed 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." In Massachusetts, a parent or a school district, "may request mediation and/or a hearing at any time on any matter[[12]](#footnote-12) 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."[[13]](#footnote-13) It is well established that matters that come before the BSEA must involve a live or current dispute between the Parties.[[14]](#footnote-14) In addition, 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."[[15]](#footnote-15)

1. *Placement in an Unapproved Program*

Under 20 U.S.C. § 1401(a)(18)(D), the ‘free and appropriate public education’ required under IDEA must meet the standards of the State educational agency; this means that “the universe of private programs that a state may consider is at least partly defined by state law.”[[16]](#footnote-16) 603 CMR 28.06 (3)(d) states that the “school district shall, in all circumstances, first seek to place a student in a program approved by the Department pursuant to the requirements of 603 CMR 28.09…. When an approved program is available to provide the services on the IEP, the district shall make such placement in the approved program in preference to any program not approved by the Department.” As such, the Hearing Officer cannot order a school district to fund an unapproved program[[17]](#footnote-17) except “in cases where a parent unilaterally places a child in [an unapproved] program because the school has not offered an appropriate IEP.”[[18]](#footnote-18)

1. *Application of Legal Standards:*

Taking as true the allegations in the complaint, as well as such inferences as may be drawn therefrom in Parent’s favor,[[19]](#footnote-19) and construing them liberally given Parent’s *pro se* status, I find that Parent plausibly suggests an entitlement to relief.

The District is correct that, in contrast to cases where parents, believing that the school district has failed to offer a FAPE, unilaterally place their child in an unapproved program and seek a reimbursement order, a Hearing Officer cannot order *prospective* placement in an unapproved program where an *approved,* appropriate program is *available*. Here, while a unilateral placement has not been made and thus a prospective placement at an unapproved program is not a remedy I can order,[[20]](#footnote-20) reading Parent’s Hearing Request liberally, Parent has alleged that the IEPs and placements were not reasonably calculated to provide Student with a FAPE in the LRE. Such allegations, wholly within the jurisdiction of the BSEA, are sufficient to withstand dismissal of the matter at this stage. [[21]](#footnote-21)

Nor is Parent required, at this stage, to offer expert evidence in support of his claims.[[22]](#footnote-22)

As such, Parent’s FAPE claims survive dismissal.

**V. ORDER:**

The District’s *Motion to Dismiss* is DENIED.

The Hearing in this matter will proceed on the following issue: Whether the Individualized Education Programs (IEPs) for the periods 9/8/2023 to 9/7/2024 and/or 9/9/2024 to 9/8/2025 were/are reasonably calculated to provide Student a free appropriate public education (FAPE) in the least restrictive environment (LRE)? If the answer is no, then what is the proper remedy?

So Ordered,

/s/ Alina Kantor Nir
Alina Kantor Nir

Date: April 25, 2025

1. The Motion was filed on April 24, 2025 at 7:46PM. As such, it is deemed to have been filed on the following business day. [↑](#footnote-ref-1)
2. Via email dated same the District indicated that it was not requesting a hearing on the *Motion* but was willing to participate in one should the Hearing Officer find it necessary. [↑](#footnote-ref-2)
3. *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995). [↑](#footnote-ref-3)
4. Student has delegated decision-making rights to Parent. [↑](#footnote-ref-4)
5. See *Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997). [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. 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. [↑](#footnote-ref-8)
9. *Iannocchino v. Ford Motor Co.,* 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). [↑](#footnote-ref-9)
10. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-10)
11. *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). [↑](#footnote-ref-11)
12. Limited exceptions exist that are not here applicable. [↑](#footnote-ref-12)
13. 603 CMR 28.08(3)(a). [↑](#footnote-ref-13)
14. See *In Re: Student v. Bay Path Reg'l Vocational Tech. High Sch.*, BSEA # 18-05746 (Figueroa, 2018). [↑](#footnote-ref-14)
15. *In Re: Georgetown Pub. Sch*., BSEA #1405352 (Berman, 2014). [↑](#footnote-ref-15)
16. *T.R. v. Kingwood Twp. Bd. of Educ.,* 205 F.3d 572, 580 (3d Cir. 2000); see *Antkowiak v. Ambach,* 838 F.2d 635, 638 (2d Cir.1988) (rejecting placement in an unapproved school). [↑](#footnote-ref-16)
17. See, e.g., *Manchester*-*Essex Reg'l Sch. Dist. Sch. Comm. v. Bureau of Special Educ. Appeals of the Massachusetts Dep't of Educ*., 490 F. Supp. 2d 49, 54–55 (D. Mass. 2007) (“[a]s a matter of law, the School District was entitled to refuse the unapproved and unaccredited program for D.T.'s IEP”); *Tewksbury School Committee v. Bureau of Special Education Appeals, et al.,* Civil Action No. 08-11172-GAO (Mass. 2009) (finding that the district was not required to amend the student's IEP to reflect the Kumon Center as the service provider nor to pay the Kumon Center directly); *Z.H. v. New York City Dep't of Educ.,* 107 F. Supp. 3d 369, 376 (S.D.N.Y. 2015) (the “fact that a school district may consider placement in a private school does not mean that it may place the student at any private school, including one that does not meet the Commissioner's approval standards*”); Dobbins v. D.C.,* No. CV 15-0039 (ABJ), 2016 WL 410995, at \*5 (D.D.C. Feb. 2, 2016) (agreeing that as parents had “not established that none of the OSSE-approved nonpublic special education schools or programs would be able to implement a full-time residential IEP for [A.D.] [and] [] because [Solstice] lacks a valid Certificate of Approval from OSSE, pursuant to D.C. Code § 38-2561.03(b)(2),” the hearing officer was correct in denying parents’ request that the hearing officer “order DCPS to fund [A.D.'s] placement at [Solstice]”); *In Re: Student v. Newburyport (Ruling)*, BSEA # 2411365 (Kantor Nir, 2024) (“As such, the Hearing Officer cannot order a school district to fund an unapproved program where an appropriate approved one is available….Here, an approved residential program could be available to Student and must be given preference”); *Tewksbury Public Schools*, BSEA # 1402344 (Putney-Yaceshyn, 2015) (given Student's acceptance at an approved residential school, Tewksbury could not be permitted to use public funds to place the student residentially in a non-educational residential placement); *In Re: Hamilton-Wenham Regional School District,* BSEA #07-2103 (Putney-Yaceshyn, 2007) (“Although Student believes that only OPI can provide him with the services he requires, a belief not supported by a scintilla of expert evidence, OPI is not an option for him. Hamilton-Wenham is legally precluded from providing public funds for a placement that is neither approved by the Commonwealth of Massachusetts nor an educational program”). [↑](#footnote-ref-17)
18. See *Manchester-Essex Reg'l Sch. Dist. Sch. Comm.,* 490 F. Supp. 2d at 54. [↑](#footnote-ref-18)
19. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-19)
20. See *In Re: Student and Arlington Public Schools,* BSEA # 2503543 (Ruling on Arlington Public School’s [Partial] Motion to Dismiss, Kantor Nir, 2024); see also *In Re: P.J.& Arlington Public Schools*, BSEA # 2503415 (Ruling on the District’s Motion to Dismiss, Mitchell, 2024). [↑](#footnote-ref-20)
21. As the FAPE claims in the present matter present a justiciable issue, a Hearing Officer is not bound to order the precise program/placement sought by a parent. Specifically, in rendering her decision, the Hearing Officer has broad authority to "order such educational placement and services as [s]he deems appropriate and consistent with this chapter to assure the child receives a free and appropriate public education in the least restrictive environment.” M.G.L. c. 71B, **§**3; see *In Re: Student v. Braintree Public Schools*, BSEA # 1400815 (Ruling On Braintree Public Schools Motion To Dismiss Parent’s Request For Hearing, Figueroa, 2013) (the fact that the relief sought by the nonmoving party in the context of a motion to dismiss “is not available from the Bureau of Special Education Appeals is not automatically grounds for a Rule 12(b)(6) dismissal in special education cases in this jurisdiction”). [↑](#footnote-ref-21)
22. The District cites to *In Re: Hamilton-Wenham Regional School District*, BSEA # 072103 (Putney-Yaceshyn, 2007) for the proposition where Parent has not submitted any expert evidence in support of Parent’s claims, his requested relief cannot be awarded. However, *In Re: Hamilton-Wenham Regional School District* is distinguishable from the instant matter; there, Hearing Officer Catherine Putney-Yaceshyn reached her conclusion after a hearing on the merits. Here, at the motion to dismiss stage, it is sufficient that the allegations plausibly entitle the party to relief. See Ocasio-Hernandez v. Fortuno-Burset, 640 F.3d 1, 12 (1st Cir. 2011) ("in order to 'show' an entitlement to relief a complaint must contain enough factual material 'to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)'") (internal citation omitted). [↑](#footnote-ref-22)