**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Boston Public Schools BSEA # 2512789**

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

This matter comes before the Hearing Officer on the Boston Public Schools’ *Motion to Dismiss* (*Motion*) filed on June 5, 2025 in which Boston Public Schools (Boston or the District) asserts that the Hearing Request in the instant matter must be dismissed because Student is enrolled in Boston Green Academy (BGA) and therefore Boston is not the appropriate local education agency (LEA) from which the Parents may request relief. Because Boston “cannot provide the relief requested by the Parents in their Hearing Request,… [the District] requests that the Hearing Officer dismiss Parents' claim.”

Parents, who are *pro se*, did not respond despite email reminders from the undersigned Hearing Officer to do so.

Via email dated June 5, 2025, the District asserted that it was not requesting a hearing on the *Motion*. Because neither testimony nor oral argument would advance the Hearing Officer's understanding of the issues involved, this Ruling is issued without a hearing, pursuant to  Rule VII(D of the *Hearing Rules for Special Education Appeals* (*Hearing Rules*).

For the reasons set forth below, the District’s *Motion* is ALLOWED.

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

Parents filed a Hearing Request with the BSEA on May 13, 2025 on behalf of their son who attends BGA. According to Parents, Student requires 1:1 support. Parents name Boston as Student's School District and as the defendant in this action.

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

In applying the standards below, I bear in mind that complaints filed by pro se parties are to be construed liberally.[[1]](#footnote-1) 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.”[[2]](#footnote-2) 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.[[3]](#footnote-3)

1. *Motions to Dismiss*

Pursuant to Rule XVII A and B of the *Hearing Rules* and 801 CMR 1.01(7)(g)(3)[[4]](#footnote-4), 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.”[[5]](#footnote-5) The hearing officer must take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff’s favor.”[[6]](#footnote-6) These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”[[7]](#footnote-7)

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."[[8]](#footnote-8) In Massachusetts, a parent or a school district, "may request mediation and/or a hearing at any time on any matter[[9]](#footnote-9) concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities."[[10]](#footnote-10) Nevertheless, it is well established that matters that come before the BSEA must involve a live or current dispute between the Parties.[[11]](#footnote-11) 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."[[12]](#footnote-12)

1. *Application of Legal Standards:*

Taking as true the allegations in the complaint, as well as such inferences as may be drawn therefrom in Parents’ favor,[[13]](#footnote-13) construed liberally given their pro se status, I find that Parents have not plausibly suggested an entitlement to relief.

The District is correct that, as a Horace Mann Charter Public School (HMC), BGA operates as a separate local educational authority (LEA) from Boston. HMCs are established by Massachusetts statute as independent of their local school committees.[[14]](#footnote-14) Specifically, DESE considers BGA to be a separate LEA from BPS.[[15]](#footnote-15)

Here, Parents have alleged that the Student’s IEP is not reasonably calculated to provide the Student with a FAPE, as he requires 1:1 support. Although the subject matter of the claim is within the jurisdiction of the BSEA, it must be dismissed because Parents have alleged it against the incorrect party. Hence, even if I take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in [Parents’] favor,”[[16]](#footnote-16) as I am required to do, Parents’ complaint fails to “raise a right to relief” against BPS[[17]](#footnote-17), because BPS is not Student’s LEA and therefore has no responsibility toward Student; rather, BGA is Student’s LEA and is responsible for providing Student with a FAPE.[[18]](#footnote-18)

As such, Parents’ claims are dismissed without prejudice.

**V. ORDER:**

The District’s *Motion to Dismiss* is ALLOWED. Parents’ Hearing Request is hereby dismissed *without prejudice*. Parents may refile the Hearing Request against BGA.

So Ordered,

/s/ Alina Kantor Nir
Alina Kantor Nir

Date: June 12, 2025

**COMMONWEALTH OF MASSACHUSETTS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

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

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

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

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

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

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

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

Compliance

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

Rights of Appeal

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

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

Confidentiality

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

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

Record of the Hearing

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

1. See *Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997). [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. *Id*. [↑](#footnote-ref-3)
4. 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-4)
5. *Iannocchino v. Ford Motor Co.,* 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). [↑](#footnote-ref-5)
6. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-6)
7. *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). [↑](#footnote-ref-7)
8. See 34 C.F.R. §300.507(a)(1). [↑](#footnote-ref-8)
9. Limited exceptions exist that are not here applicable. [↑](#footnote-ref-9)
10. 603 CMR 28.08(3)(a). [↑](#footnote-ref-10)
11. See *In Re: Student v. Bay Path Reg'l Vocational Tech. High Sch.*, BSEA # 18-05746 (Figueroa, 2018). [↑](#footnote-ref-11)
12. *In Re: Georgetown Pub. Sch*., BSEA #1405352 (Berman, 2014). [↑](#footnote-ref-12)
13. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-13)
14. See M.G.L. c. 71, § 89; see *also Department of Elementary and Secondary Education ("DESE") Charter School Technical Advisory 03-1: Horace Mann Charter Schools* ("Except for the approval of its annual budget, the operation of a Horace Mann charter school should be independent of the local school committee") which may be found at <https://www.doe.mass.edu/charter/guidance/2003-1.html>. [↑](#footnote-ref-14)
15. See *DESE MA Local Education Agencies' Special Education Determinations* (available at <https://www.doe.mass.edu/sped/osep/determinations.html>). [↑](#footnote-ref-15)
16. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-16)
17. *Golchin*, 460 Mass. at 223. [↑](#footnote-ref-17)
18. In Massachusetts, charter schools are program schools. See 603 CMR 28.02 (16) (“*Program school* shall mean the school in which the student is enrolled according to the provisions of M.G.L. c. 71, § 89 (charter schools…”). A program school has “programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law related to the program school.” 603 CMR 28.10(6). [↑](#footnote-ref-18)