

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Bureau of Special Education Appeals

In Re: Student

&

BSEA No. 1610565

Shrewsbury Public Schools

RULING ON MOTION TO DISMISS

On June 8, 2016 Parent filed her initial *Hearing Request* with the BSEA. On the same date, Shrewsbury challenged the sufficiency of the *Hearing Request* on two grounds: (1) that the *Request* failed to adequately notify the School of the basis for the dispute or the relief sought by Parent, and, (2) that certain claims fell outside of the applicable statute of limitations.

On June 13, 2016, I issued a *Ruling* granting the challenge in part and denying it in part. Specifically, that *Ruling* directed parent to file an *Amended Hearing Request* by June 27, 2016 which did not exceed 5 (five) pages and which provided a clear, concise statement of the nature of the dispute, the factual basis for the dispute, and the relief sought. The *Ruling* deferred consideration of dismissal of claims based on the statute of limitations until after an *Amended Hearing Request* had been filed.

On or about June 29, 2016 Parent filed an *Amended Hearing Request* in which she alleged, among other things, that the School had “withheld information that was required to be provided under federal law...and gave specific misrepresentations that they had resolved the problems [including problems related to alleged bullying of Student] forming the basis of my hearing request.” The relief sought included “...compensatory education related to the missed IEP and related services beginning September 2013 to May 5, 2015...”

On July 5, 2016, Shrewsbury filed a *Response to Parent’s Hearing Request/Motion to Dismiss* in which it asserted that “no compensatory services are owed for the 2014-2015 school year” and moved to dismiss “any claims relating back earlier than June 29, 2014...as these are barred by the IDEA’s two-year statute of limitations.”

Parent filed no written response to the *Motion to Dismiss*; however at a pre-hearing conference held on August 17, 2016 Parent stated that based on her review of documents in Student's school record, she had reason to believe that the School had withheld certain information from Parent, such that the two-year statute of limitations should be tolled. Shrewsbury disputed Parent's allegations, asserting that it had provided Parent with all required information.

DISCUSSION

The IDEA, at 20 USC §1415(f)(C), establishes a two-year statute of limitations for requesting a due process hearing as follows:

(C) 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...*Id.*

There are exceptions to this two-year timeline as follows:

(D) Exceptions to the timeline. The timeline...shall not apply to a parent if the parent was prevented from requesting the hearing due to—

- (i) Specific misrepresentations by the [LEA] that it had resolved the problem forming the basis of the complaint; or
- (ii) The [LEA's] withholding of information from the parent that was required under ...[20 USC §§1411 et seq.]¹ to be provided to the parent. *Id.*, §1415(f)(D)(i)-(ii).

In the instant case, the Parent's *Amended Hearing Request* specifically alleges that Shrewsbury "withheld information that was required to be provided under federal law" and also "gave specific misrepresentations that [it] had resolved the problems" complained of by Parent. Parent reiterated this allegation at the pre-hearing conference and the School denied it. Neither party presented testimony of documentary evidence in support of its respective position.

The parties' factual dispute over whether Shrewsbury withheld information or made misrepresentations as alleged by Parent must be resolved by an evidentiary hearing; therefore the School's *Motion to Dismiss* cannot be granted at this time. For reasons of efficiency, evidence pertaining to tolling of the statute of limitations will be incorporated into the hearing on the merits of the case, which has been scheduled for November 15 and 16, 2016. As the moving party, Parent

¹ Relevant portions of these sections include the informed consent and parental notification provisions contained, respectively, in §§1414 and 1415.

will have the burden of proving all of her allegations, including those pertaining to this issue.²

ORDER

The Shrewsbury Public Schools' *Motion to Dismiss* is DENIED without prejudice.

By the Hearing Officer,

Dated: August 25, 2016

² A *Proposed Statement of Issues*, which accompanies this *Ruling*, includes the tolling issue.