

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

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In Re: Guillermo¹

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BSEA #1900219

Boston Public Schools

RULING ON MOTION TO DISMISS

This matter comes before the BSEA on Boston's Motion to Dismiss the Hearing Request filed by the Student on July 10, 2018. Guillermo's Hearing Request recites multiple failures of the school district to respond fully and timely to parental requests made between June 2017 and June 2018 for all student records concerning him held by Boston. Guillermo asserts that the procedural IDEA rights guaranteed to him and to his parents have been violated by Boston's actions and inactions. He also asserts that Boston's failure to produce the necessary records may be causing him substantive educational harm and may be depriving him of the free, appropriate public education to which he is entitled. Boston asserts that the BSEA does not have jurisdiction to entertain claims involving student records regulations. 603 CMR 23.209.

LEGAL FRAMEWORK

A Motion to Dismiss may be granted if the party requesting the hearing fails to state a claim for which relief is available through the BSEA. 801 CMR 1.01 (7) (g) (3); BSEA Hearing Rules XVII (4). See also F.R.C.P. Rule 12 (b) (6) and M.R.C.P. Rule 12 (b) (6). Dismissal on pleadings is disfavored. In considering whether dismissal is warranted a Hearing Officer must accept all factual allegations set forth in the petitioner's hearing request as true. Similarly, the Hearing Officer must resolve all factual interferences and/or inconsistencies, as well as the veracity or provability of a factual claim, in favor of the non-moving party. If those facts, proved at a hearing, would entitle the non-moving party to any form of relief from the BSEA, then dismissal for failure to state a claim is not appropriate. *Ashcroft v. Iqbal* 556 U.S. 662 (2009); *Ocasio-Hernandez v. Fortunato-Burset*, 640 F.3d. 1 (1st Cir. 2011); *Doe v. Attleboro*, 2011 U.S. Dist. LEXIS 98235 (Mass. 2011) (not in official reporter).

DISCUSSION

¹"Guillermo" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

In moving to dismiss the hearing request Boston argues that the BSEA lacks jurisdiction to consider appeals of student records requests. It relies on a BSEA Ruling issued in 2002 which found that the proper venue to lodge a stand alone complaint concerning the content of a student's record is the school system superintendent and ultimately the district's school committee. *Northborough Public Schools*, 8 MSER 301 (2002). See also: 603 C.M.R. 23.09.

Boston's reliance on that Ruling is misplaced. In the instant matter the Student's claim does not concern the content of his school records. It concerns access to those records. Ready access to the information a school district creates, collects, shares, stores and relies on in decision-making is at the heart of the IDEA's procedural and substantive protections. The IDEA's fundamental requirement is that parents have the opportunity to participate meaningfully in all phases of their child's special education. Here, Guillermo alleges that Boston failed to adhere to that core principle through inadequate responses to the Parents' repeated requests for the information Boston developed and held about him and that such failure has deprived his parents of the opportunity to participate meaningfully, on a footing equal to that of school district team members, in the evaluation, design and implementation of his special education program. Thus, Guillermo has articulated a legitimate procedural claim under the IDEA. BSEA Hearing Officers unquestionably have jurisdiction over disputes implicating the IDEA's procedural requirements and, if the evidence so shows, Hearing Officers may find that procedural errors have lead to a substantive denial of a free appropriate public education to an IDEA-eligible student. 20 U.S.C. §1415 (a); 34 CFR §300.513; 603 CMR 28.08 (3); *Fry v. Napoleon Community Schools*, 580 U.S. ___, 137 S. Ct. 743 (2017); *Roland M. v. Concord School Committee*, 910 F. 580 2d 983 (1st Cir. 1990); See also: *Newton Public Schools*, 23 MSER 26 (2016). Therefore, dismissal on jurisdictional grounds is not proper.

CONCLUSION AND ORDERS:

- 1) Boston's Motion to Dismiss is DENIED.
- 2) This matter shall proceed to Hearing.
- 3) The issues before the BSEA are:
 - A. Whether Boston failed to promptly and fully disclose all school records concerning Guillermo upon parental request? and
 - B. If not, whether Boston's failure to timely and fully disclose all information it holds about Guillermo violated Guillermo's IDEA protections?

By the Hearing Officer

Lindsay Byrne

Dated: August 21, 2018