

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Gracie¹

BSEA: 1809988

**RULING ON WELLESLEY PUBLIC SCHOOLS' MOTION FOR SUMMARY
JUDGMENT**

This matter comes before the Hearing Officer on the *Motion for Summary Judgment* filed by the Wellesley Public Schools (“Wellesley” or “the District”) on August 28, 2018. Parent has filed no response. Neither party requested a hearing on the Motion, and as testimony or oral argument would not advance the Hearing Officer’s understanding of the issues involved, this Ruling is being issued without a hearing pursuant to Bureau of Special Education Appeals *Hearing Rule VII(D)*. For the reasons set forth below, Wellesley’s *Motion for Summary Judgment* is GRANTED.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On June 11, 2018, Parent,² through her attorney, filed a *Hearing Request* against Wellesley seeking prospective relief. Specifically, Parent argued that the District’s refusal to permit Gracie to access a microwave to heat up gluten-free meals from home constitutes a violation of her right to a free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973 (§ 504) because Gracie, who has celiac disease, is deprived of the nutrition she needs to function properly during the school day. Parent sought an Order allowing Gracie to use a microwave at school. The Hearing was scheduled for July 16, 2018.

In its *Response* to Parent’s *Hearing Request*, filed July 3, 2018, the District asserted that Gracie had been provided with a FAPE in accordance with § 504, including accommodations, aids, and services. Moreover, according to Wellesley, the choice of food items available at school for all students includes several hot gluten-free items, and Gracie (like all students at her school) has the option to bring her own meals to school in an insulated container. The District also requested postponement of the Hearing to permit the parties to work together to address the issues underlying Parent’s *Hearing Request*. Parent assented to this request. The Hearing was scheduled for September 25 and 28, 2018, and a Pre-Hearing Conference was scheduled for August 9, 2018.

On July 20, 2018 Counsel for Parent notified the BSEA that subsequent to the filing of the *Hearing Request*, at which time Parent had full legal custody of Gracie, the Probate Court had transferred all educational decision-making authority to Gracie’s father in connection with

¹ “Gracie” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

² The *Hearing Request* was filed by Gracie’s mother. All documents in the matter have been sent to both of Gracie’s parents, at separate addresses. Father has not filed any documents or otherwise indicated his intent to participate in the proceedings.

divorce proceedings. She explained that the interest of the mother was adverse to the interest of the father and as a result, she no longer represented a full party in the matter. On August 8, 2018, Counsel filed a *Motion for Leave to Withdraw Representation*, citing a breakdown in the lawyer-client relationship. This *Motion* was allowed the same day, as was the District's request, also filed August 8, 2018, to postpone the Pre-Hearing Conference to clarify the status of the matter. The Order issued August 8, 2018 continued the case to the previously established hearing dates.

On August 28, 2018, Wellesley filed the instant *Motion for Summary Judgment*. Neither Parent nor Gracie's father has filed a response.

II. DISCUSSION

A. Legal Standard for Summary Judgment

Pursuant to 801 C.M.R. 1.01(7)(h), Summary Decision may be granted where there is "no genuine issue of fact relating to all or part of a claim of defense and [the moving party] is entitled to prevail as a matter of law." This rule of administrative practice is modeled after Rule 56-Summary Judgment- of both the Massachusetts and Federal Rules of Civil Procedure.³ The party seeking summary judgment begins by demonstrating, with the support of its documents, that there is no genuine issue relating to the claim or defense. This party bears the burden of proof, and all evidence and inferences must be viewed in the light most favorable to the party opposing summary judgment.⁴

In response to a motion for summary judgment, the adverse party "must set forth specific facts showing that there is a genuine issue for trial."⁵ To survive this motion and proceed to hearing, the adverse party must show that there is "sufficient evidence" in her favor that the fact finder could decide for her.⁶ In so doing, she may not rely on the pleadings alone.⁷ "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted."⁸

B. Application of Legal Standards

In its *Motion for Summary Judgment*, Wellesley argues that Parent does not have legal standing to obtain the relief sought, and that because Gracie's father, who has final educational decision-making authority, is not a party to the matter, any decision on the merits by the BSEA would have no force or effect. In support of its *Motion*, the District submitted an Order of the Massachusetts Probate and Family Court specifying, among other things, that Gracie's parents are to share their perspective on educational issues in writing, but if they cannot agree, "Husband shall have final decision-making authority on all matters of education for the children."⁹

³ Federal Rule of Civil Procedure 56 authorizes the entry of summary judgment whenever it appears that "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."

⁴ *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 252 (1986).

⁵ *Id.* at 250.

⁶ *Id.* at 249.

⁷ See *Correllas v. Viveiros*, 410 Mass. 314, 317 (1991).

⁸ *Anderson*, 477 U.S. at 249-50.

I have previously held that a parent who “file[s] a due process complaint at a time that she ha[s] custody of her child, seeking relief stemming from events that occurred while she had custody of her child, does not lose standing to pursue that complaint on his behalf by virtue of the fact that she lost custody of him subsequent to the filing of her claim.”¹⁰ Unlike *In Re Framingham* and *Quin*, where Parent sought compensatory relief, in the instant matter Parent requests that Gracie be permitted to use a microwave at school in the future. As such, she seeks prospective relief in the form of an Order that would govern the relationship between Gracie and the school district for a time period in which she does not have educational decision-making authority.

Whether Gracie is entitled to access a microwave at school pursuant to § 504 is not material, because the District has established, through submission of uncontroverted documentary evidence, that Parent is without standing to pursue the relief she seeks. As standing is an essential component of a claim before the BSEA, the District has met its burden to demonstrate that Parent will be unable to prevail at hearing.

CONCLUSION

The District has established that there is no genuine issue of material fact for hearing. Wellesley is entitled to judgment as a matter of law.

ORDER

Wellesley’s *Motion for Summary Judgment* is hereby ALLOWED. The Hearing scheduled to begin September 25, 2018 is cancelled, and the case is DISMISSED.

By the Hearing Officer:

Amy M. Reichbach
Dated: September 11, 2018

⁹School Exhibit A. Wellesley also submitted an affidavit establishing that Gracie’s father provided the District with this document on July 18, 2018.

¹⁰*In Re Framingham Public Schools and Quin*, 22 MSER 81, 84 (Reichbach 2016).