

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

BUREAU OF SPECIAL EDUCATION APPEALS

In Re: Lincoln Public Schools

BSEA #2007623

**RULING ON MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT OF
LINCOLN PUBLIC SCHOOLS**

On February 14, 2020, Parents filed a request for hearing with the Bureau of Special Education Appeals (BSEA) which alleges that Student's current placement at the Carroll School (Carroll) in Waltham, MA is appropriate, and that the Lincoln Public Schools' (Lincoln or LPS) proposed placement at the Landmark School would not provide Student with a free, appropriate public education (FAPE).

Parents further allege that Lincoln's proposal to change Student's placement is motivated by the inability of LPS and Carroll, which is not a DESE-approved private special education school, to negotiate the agreement(s) necessary to allow Lincoln to fund Student's placement. Parents seek the following relief: (1) a "settlement agreement with the District" under which Lincoln would fund Student's placement at Carroll for the 2019-2020 school year; alternatively, (2) "Guidance/Rule and Regulation Clarity/Modifications for Unapproved School Placement and Completion of Carroll Placement for [Student]."

On February 21, 2020, Lincoln filed a *Response, Motion to Dismiss and for Summary Judgment*¹ Lincoln seeks dismissal of Parents' hearing request based on lack of subject-matter jurisdiction. Alternatively, Lincoln seeks summary judgment in its favor arguing, among other things, that LPS' cannot, as a matter of law, obtain DESE approval to fund the Carroll placement because Carroll has refused to comply with the approval process. Additionally, Lincoln asserts that Parents accepted an IEP designating Student's placement as Landmark.

On March 18, 2020, Parents filed a *Response to Lincoln Public Schools' Response to the Parents' Hearing Request* in which they disputed Lincoln's claim that they had accepted the proposed Landmark placement, and attached documents purporting to support their position. Parents also stated their disagreement with Lincoln's allegation that Carroll had failed or refused to comply with requirements for unapproved special education schools.

¹ Lincoln also filed a challenge to the sufficiency of Parents' hearing request, which was denied in a separate *Ruling* on March 6, 2020.

I. Factual Background as to *Motion to Dismiss*

For purposes of ruling on the *Motion to Dismiss*, I consider only the assertions set forth in Parents' hearing request, which I consider to be true and construe in favor of Parents as the party opposing dismissal.

1. Student is 10 years old and is a resident of Lincoln. Student is eligible for special education services on the basis of a severe language-based learning disability. Student's learning disability has also impacted his emotional functioning.
2. Student attended Lincoln Public Schools for kindergarten. Parents unilaterally placed Student at Carroll School for first grade (2015-2016). Parents and LPS entered a settlement agreement under which Lincoln partially funded Student's Carroll placement for first grade, and fully funded that placement for second grade (2016-2017) and third grade (2017-2018).
3. Lincoln continued to fund Student's placement at Carroll for fourth grade (2018-2019) pursuant to a Memorandum of Understanding (MOA) which provided for LPS to explore Landmark School as a potential placement for 2019-2020 and required Parents to apply to Landmark "if applicable." Parents signed the MOA "to secure funding for Carroll." The MOA stated that Parents had not had an opportunity to assess the appropriateness of Landmark for Student.
4. Pursuant to the MOA, Parents applied for Landmark, and Student was accepted for the 2019-2020 school year. On the advice of former counsel, on or about April 3, 2019, Parents accepted the Landmark placement but also informed LPS that Carroll was the "only viable option" for Student and provided LPS with a letter from Student's psychiatrist describing the impact on Student from changing schools. That letter, dated April 1, 2019, stated that it would be "detrimental to his mental health and his progress to have to change schools, have to make new friends, and have to commute long distances every day. All of those stresses would undoubtedly be deleterious to [Student's] emotional state and would undermine further growth for a significant period."
5. Lincoln subsequently agreed to continue to fund Student's Carroll placement for the period from June 2019 to June 2020; however, the District and Carroll have been unable to complete the written agreements that would allow Lincoln to fund Carroll, which is not a DESE-approved special education school.

II. Standard for Ruling on A Motion to Dismiss

According to Rule XVI.B.4 of the BSEA *Hearing Rules for Special Education Appeals*, (*Hearing Rules*) a hearing officer may dismiss all or part of a hearing request for “failure to state a claim upon which relief may be granted.” *Id.*² In determining whether to dismiss a claim, a hearing officer must consider as true all facts alleged by the party opposing dismissal. The hearing officer should not dismiss the case if the facts alleged in the hearing request, if proven, would entitle the non-moving party to relief that the BSEA has authority to grant. *Caleron-Ortiz v. LaBoy-Alvarado*, 300 F.3d 60 (1st Cir. 2002); *Ocasio-Hernandez v. Fortunato-Burset*, 640 F.3d. 1 (1st Cir. 2011). A motion to dismiss will be denied if “accepting as true well-pleaded factual averments and indulging all reasonable inferences in the plaintiff’s favor...recovery can be justified under any applicable legal theory.” See *Caleron-Ortiz, supra*. See also *San Juan Cable LLC v. Puerto Rico Telephone*, 612 F.3d 25 (1st Cir. 2010). The factual allegations must be sufficient to “raise a right to relief above a speculative level on the assumption that the allegations in the complaint are true (even if doubtful in fact.)” *Bell Atlantic v. Twombly*, 550 U.S. 554, 555 (2007).

The case may be dismissed only if the hearing officer cannot grant any relief under federal³ or state⁴ special education statutes, or Section 504 of the Rehabilitation Act.⁵ See *Calderon-Ortiz, supra*; *Whitinsville Plaza Inc. v. Kotseas*, 378 Mass. 85, 89 (1979); *Nader v. Citron*, 372 Mass. 96, 98 (1977); *Norfolk County Agricultural School*, 45 IDELR, 26 (2005). Conversely, if the allegations of the party opposing dismissal “contain sufficient factual matter...to ‘state a claim to relief that is plausible on its face,’” under any one or more of these statutory provisions, the matter should not be dismissed. See *Haley v. City of Boston*, 657 F.3d 39, 46 (1st Cir. 2011), quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Finally, consistent with opinions from the First Circuit Court of Appeals, hearing officers must liberally construe pleadings filed by *pro se* parties. “The 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. 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.” *Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir., 1997)

² See also *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3). These provisions are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure which states: “...a party may state the following defenses by motion...failure to state a claim upon which relief may be granted...” The BSEA is guided by this rule and cases decided thereunder in evaluating motions to dismiss.

³ Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et. seq*

⁴ M.G.L. 71B

⁵ 29 U.S.C. § 794

III. Discussion

In their hearing request, Parents seek continued funding for Carroll.⁶ They allege that Lincoln 's proposed placement at Landmark is inappropriate because it would require Student to disrupt his current, successful placement at Carroll and would involve a much longer commute, both of which would be harmful to his mental health. In its *Motion to Dismiss* Parents' hearing request, Lincoln argues that because Parents consented to the Landmark placement in the IEP covering March 2019 to March 2020, and did not subsequently reject the IEP or placement, Parents have failed to state a claim on which relief may be granted, because the BSEA may not revisit accepted, expired IEPs that have been fully implemented.

It is well-established that hearing officers "are precluded from re-opening/revisiting accepted IEPs that have expired where parents have participated in the development of the IEP; parents have received notice of their options for rejection of an IEP and proceeding to a due process hearing; parents have chosen to accept the IEP; and parents have never rejected the IEP during its term." *In Re: Westport Community Schools*, 19 MSER 016 at 111 (Oliver, 2013) (Citations omitted). In this case, however, Parents allege that they signed the consent to place Student at Landmark solely to secure funding for a private placement, that they informed the District that they wished to continue Student's enrollment at Carroll despite having consented to Landmark, and that, indeed, Lincoln continued to take steps toward obtaining DESE approval for a Carroll placement. Parents' hearing request seems to put into question whether they fully understood the implications of accepting the proposed placement, or whether, given subsequent events and actions by Lincoln, they should be deemed as having rejected said placement.

Construing Parents' hearing request liberally, in light of their *pro se* status, I find that they allege that Lincoln's proposed Landmark placement is inappropriate, they appear to allege that their purported acceptance of the proposed Landmark placement may have been flawed or invalid, and that the relief that they seek is continued funding for Carroll. Parents' hearing request, insofar as it seeks funding for Carroll,⁷ is sufficient to survive Lincoln's *Motion to Dismiss*, and such Motion is DENIED.

IV. Additional Factual Background for Summary Judgment

The following additional factual background is gleaned from all of the parties submissions to date, considered in the light most favorable to the non-moving party (Parents).

⁶ As stated above, Parents also seek a "settlement agreement" with the District and/or "guidance/modification" regarding regulations and policies concerning public funding for special education schools that are not approved by DESE. The BSEA has no authority to grant this relief, and as such, these claims are dismissed. In consideration of Parents' *pro se* status, however, I construe these claims simply as suggestions for how the case might be resolved. It is clear and that the relief that Parents' seek is funding for Carroll. If Parents' meet their burden of persuasion in this case, the BSEA is certainly authorized to grant such relief.

⁷ See Note 6, above.

1. Parents signed Lincoln's Placement Consent Form, which designated Landmark as Student's placement, on April 3, 2019. On April 10, 2019, Parents submitted the form to Lincoln attached to an email which stated the following: "Please see attached the signed Placement Consent Form where we have consented to the placement at Landmark School. As we described in the Team meeting, our preference is for [Student] to remain at Carroll, based on the following..."
2. In an email dated May 12, 2019, Parents notified Lincoln that they intended to unilaterally place Student at Carroll for the 2019-2020 school year.
3. From in or about April through June, 2019, Lincoln and Carroll School attempted to reach agreement on paperwork necessary for DESE approval for public funding; however, no agreement was reached.

V. Standard for Summary Judgment

Summary judgment is available at the BSEA if "there is no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law..." 801 CMR 1.01(7)(h). In determining whether to grant summary judgment, BSEA hearing officers are guided by Rule 56(a) of the Federal Rules of Civil Procedure, which provides that summary judgment shall be granted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.*

The BSEA is also guided by Rule 56(a) of the Massachusetts Rules of Civil Procedure, which provides that summary judgment may be granted only if the "pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* See also *Rulings on Motions for Summary Judgment* in: *Zelda v. Bridgewater-Raynham Public Schools and Bristol County Agricultural School*, 12 MSER 4 (Byrne, 2006); *In Re Westwood Public Schools*, 16 MSER 378 (Figueroa, 2010); *In Re: Mike v. Boston Public Schools*, 12 MSER 364 (Oliver, 2010); *In Re Bridgewater-Raynham Public Schools*, 19 MSER 17 (Figueroa, 2013). Facts are considered "in the light most favorable to...the non-moving party." *Xiaoyan Tang v. Citizens Bank, N.A.*, 821 F. 3d 206 (1st Cir. 2016), quoting *Perez-Cordero v. Wal-Mart P.R. Inc.*, 656 F. 3d 19, 20 (1st Cir. 2011).

"An issue is 'genuine' if it can 'be resolved in favor of either party,' and a fact is 'material' if it 'has the potential of affecting the outcome of the case.'" *Tang, supra*, quoting *Perez-Cordero, supra* at 25, and *Calero-Cezero v. U.S. Dept. of Justice*, 355 F.3d 6, 19 (1st Cir. 2004). The moving party has the initial burden of producing evidence that there is no dispute of material fact. Once the moving party has done so, the burden then shifts to the party opposing summary judgment to establish, via affidavits or other documents, specific facts showing that there is a "genuine issue for trial." *Celotex Corp.*

v. Catrell, 477 U.S. 242, 248-50 (1986); *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 249 (1986); *Kathleen Burns v. Johnson*, 2016 WL 3675157 (July 2016).

VI. Discussion as to Summary Judgment

Here, Lincoln seeks summary judgment for the same reasons cited as grounds for its *Motion to Dismiss*, namely, that the BSEA is precluded from revisiting Parents' previously accepted IEP, and that as such, the District is entitled to summary judgment as a matter of law.

Based on an examination of both parties' submissions, including but not limited to the pleadings and, in particular, the email thread attached to Parents' *Response* to Lincoln's *Motion*, which thread contains multiple references to Parents' reservations about the Landmark placement as well as their statement of intent to unilaterally place Student at Carroll, I find that there is a dispute of material fact as to the status of Parents' acceptance of the IEP at issue. As noted above, on May 11, 2019, Parents notified Lincoln of their intent to unilaterally place Student at Carroll. Such notice could be construed as a rejection of the previously-accepted IEP and/or placement, especially when viewed in conjunction with their repeated statements that they wanted Student to remain at Carroll. I note also that at the time Parents provided this notice to Lincoln, the IEP at issue was still in effect, having been issued in March 2019.

In light of these circumstances, summary judgment is inappropriate and Parents are entitled to prove their allegations at a hearing.

ORDER

The Lincoln Public Schools' *Motion to Dismiss* is DENIED. Its *Motion for Summary Judgment* is DENIED. Parents may proceed to hearing on their claims; however, the hearing request as written is ambiguous as to the issues for hearing, and the precise relief sought by Parents. A conference call will be scheduled to discuss framing the issues for hearing, and may result in an order for Parents to amend their hearing request.

By the Hearing Officer,

Sara Berman

Dated: May 1, 2020