

**COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS**

Student v. Newburyport Public Schools

BSEA # 2205014

RULING ON NEWBURYPORT'S PARTIAL MOTION TO DISMISS

PROCEDURAL HISTORY

Parents filed a request for hearing on December 23, 2021, alleging that Newburyport had breached settlement agreements, dated March 2020, May 2020, and a September 2021 mediated agreement, entered into between Parents and Newburyport to resolve a prior BSEA case. Newburyport filed its Response to Parents' Hearing Request on January 3, 2022, alleging that most of Parents' claims arose during the time the Parties' settlement agreements were in effect, and are thus barred due to the BSEA's lack of jurisdiction to hear contract claims. Newburyport filed a Partial Motion to Dismiss on January 18, 2022. Parents filed a response on January 10, 2022.

NEWBURYPORT'S POSITION

Newburyport argues that the BSEA does not have jurisdiction to decide any matter related to the enforcement of contracts or the provision of Student's special education services during the period covered by the settlement agreements, to wit: March 19, 2020 through September 30, 2021. It argues that the Parties entered into binding and enforceable settlement agreements in March 2020, May 2020, and October 2020 that set out the District's obligations to Student between March 2020 and September 30, 2021 for the provision of interim services, while it sought an alternate, out of district, day school placement for Student. Newburyport further argues that the agreements set out Newburyport's obligations to Student, and the BSEA does not have the authority to alter or enforce the terms of the Parties' legally binding settlement agreements. Thus, it asserts, Parents have failed to state a claim upon which relief can be granted as it pertains to Student's services from March 2020 through September 2021, as the BSEA has neither jurisdiction to hear this matter nor the authority to grant the requested relief for the period covered by the settlement agreements.

PARENTS' POSITION

Parents argue that their claims are a result of being denied a free appropriate public education (FAPE), over which the BSEA has jurisdiction. Further, they state that their claims require BSEA expertise. Additionally, Parents assert that the September 2021 mediation agreement contains neither a waiver of claims nor of stay-put.

LEGAL STANDARD

Under the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3) and Rule 17B of the BSEA *Hearing Rules for Special Education Appeals*, a BSEA hearing officer may allow a motion to dismiss if the party requesting the appeal fails to state a claim on which relief can be granted. Since this rule is analogous to Rule 12(b)(6) of the Federal and Massachusetts Rules of Civil Procedure, BSEA hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim.¹ Specifically, a motion to dismiss should be granted only if the party filing the appeal can prove no set of facts in support of his or her claim that would entitle him or her to relief that the BSEA has authority to order. That is, a hearing officer may dismiss a case if he or she cannot grant relief under either the federal or state special education statutes or the relevant portions of Section 504 of the Rehabilitation Act, after considering as true all allegations made by the party opposing dismissal and drawing all reasonable inferences in his/her favor. See *Caleron-Ortiz v. LaBoy-Alverado*, 300 F.3d 60 (1st Cir. 2002);² *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 (December 28, 2005).

JURISDICTION OF THE BSEA

The BSEA has jurisdiction to consider only those claims for which it is expressly delegated authority by its enabling statutes and regulations, and not inconsistent with them. *Globe Newspaper Co. V. Beacon Hill Architectural Comm.*, 847 F.Supp. 179 (D. Mass. 1994), *Globe newspaper Co. v. Beacon Hill architectural Comm.* 421 Mass. 570, 659 N.E.2d 710 (MA 1996). “The IDEA and conforming Massachusetts law give the BSEA authority to determine the respective rights and obligations of publicly funded agencies and parents/students in the implementation of federal and state special education statutes.” *In Re: Monson Public Schools*, 110 LRP 49101 (August 23, 2010). The BSEA has jurisdiction over (i) any matter relating to the identification, evaluation, education program or educational placement of a child with a disability or the provision of a free appropriate public education to the child arising under this chapter and regulations promulgated hereunder or under the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq., and its regulations; or (ii) a student’s rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, and its regulations. M.G.L. ch. 71B§ 2A(a)(1).

ANALYSIS/CONCLUSIONS

In the instant case, the Parties have resolved various areas of dispute with respect to Student’s education program and placement, and memorialized their agreements in settlement agreements dated March 2020³; May 2020⁴; October 27, 2020, and a mediated agreement dated September 2, 2021. Parents allege that Newburyport has breached portions of the agreements and seek to

¹ See, for example, *In Re: Inessa R. v. Groton Dunstable School District*, BSEA No. 95-3104 (Byrne, November 1995)

² A motion to dismiss will be denied if “accepting as true all well-pleaded factual averments and indulging all reasonable inferences in the plaintiff’s favor, if recovery can be justified under any applicable legal theory. Id

³ Parents signed on March 19, 2020 and Newburyport signed on March 23, 2020.

⁴ Parents signed on May 13, 2020 and Newburyport signed on May 14, 2020.

have the BSEA order it to comply. Parents' Hearing Request seeks the following relief: enforcement of contract for 1:1 services between June 28, 2020 and November 28, 2021; for services rendered as a result of the March 2020 agreement and settlement agreements thereafter; enforcement of any and all contracts with individual providers during October and November 2021, when no settlement agreement was in place, and Newburyport began to reject bills; compensatory services for the time (April 2020 to present) that [Student] was not provided with a FAPE; transportation to and from the current education placement with an R.N. and monitor on the bus, as provided in the student's IEP. (See Parents' Request for Hearing.)

Pursuant to 34 CFR §300.507, although a party has the right to initiate a hearing on any matter set forth in 34 CFR §§300.503(a)(1) and (2), relating to the identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child, neither the statute nor the regulations specifically address the authority of hearing officers to review or approve private settlement agreements. Also, unlike the case with settlement agreements reached through the mediation⁵ or resolution processes⁶ (for which the IDEA provides for review in state or federal court), the IDEA does not specifically address enforcement by courts (or hearing officers) of private settlement agreements reached by the parties. *Letter to Shaw*, 50 IDELR 78 (2007).\

In recent years, there has been consensus among BSEA hearing officers that the aforementioned statutes and regulations do not confer upon hearing officers the authority to interpret or enforce the terms of a private settlement agreement reached outside of the hearing process between parties involved in a BSEA hearing. . To date, neither the First Circuit nor the District Court of Massachusetts has addressed the issue. As stated above, both the IDEA and Massachusetts special education law grant the BSEA authority to consider any matter relating to the identification, evaluation, education program or educational placement of a child with a disability or the provision of a free and appropriate public education to the child.

Hearing officers have addressed the issue of enforcement of settlement agreements many times. The majority of BSEA cases addressing this issue have found that the BSEA does not have authority to enforce settlement agreements. In the case of *Student v. Lincoln Sudbury Public Schools*, BSEA #11-2546 (November 29, 2010) the hearing officer found that the BSEA does not have jurisdiction to enforce a settlement agreement, even one in which the parties, by the very terms of their agreement, provided that the BSEA would have such jurisdiction. The hearing officer analogized between mediated agreements and private settlement agreements and concluded that just as mediated agreements are not enforceable by BSEA hearing officers, but are enforceable in state or federal court, so too, private settlement agreements are not enforceable by hearing officers, but rather by state and federal courts. See also, *In Re: Woburn Public Schools*, BSEA #2203102, 27 MSER 449 (Kantor Nir, 2021); *In Re: Triton Regional School District and Trevor*, BSEA #2105891, 27 MSER 217 (Reichbach, 2021) (finding the need for

⁵ A written, signed mediation agreement under 34 CFR 300.506(b) is enforceable in any State court of competent jurisdiction or in a district court of the United States. 34 CFR 300.506(b)(7), 20 U.S.C. 1415(e)(2)(F).

⁶ Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is-- Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to Sec. 300.537. 20 U.S.C. 1415(f)(1)(B).

inquiry into circumstances surrounding the negotiation of the settlement agreement to determine whether or not there was a 'meeting of the minds' and that such inquiry is within the purview of a court with jurisdiction over contract disputes, and not the BSEA); *In Re: Student and Andover Public Schools*, BSEA #2007733, 26 MSER 137 (Berman 2020) (concluding that in situations where ambiguity exists in the language of a settlement agreement and cannot be parsed, inquiry into whether there was a "meeting of the minds" is within the purview of a court of competent jurisdiction, rather than the BSEA); *In Re: Student v. Worcester Public Schools*, BSEA #1302473, 19 MSER 68 (Putney-Yaceshyn, 2013) (finding "that the BSEA does not have authority to interpret or enforce the terms of private settlement agreements" and, at the same time, relying on the existence of a settlement agreement and its terms barring the re-opening of the matter to dismiss a case); *In Re: Student and Pentucket Regional High School*, BSEA # 128636 (Figueroa, 2013) (relying on "clear and unequivocal language of a settlement agreement" to dismiss a claim); *In Re Israel and Monson Public Schools*, BSEA #105064 (Byrne, 2010) (declining "to assert subject matter jurisdiction of a dispute that relates solely to the interpretation of a privately negotiated settlement agreement not incorporated into an IEP or BSEA order," because, among other things, hearing officers lack experience and expertise in interpreting contract language and due to the very real possibility that the BSEA's obligation to "enforce the public duties set out in the IDEA" would be inconsistent with enforcing, or otherwise endorsing, the terms of a privately negotiated settlement agreement.

Consistent with the foregoing, I find that the BSEA does not have authority to interpret or enforce the terms of private settlement agreements in the instant matter. Although the statute and regulations are silent as to the enforcement of private settlement agreements, there is a specific mandate that both mediated agreements and resolution agreements be enforced in court. There is nothing within the statute, regulations, or case law that would suggest that private settlement agreements be treated any differently under the IDEA. Additionally, Massachusetts has not implemented "other mechanisms or procedures" that permit parties to seek enforcement of agreements. The only authority granted to a hearing officer with respect to a settlement agreement is to acknowledge its existence and to consider it in determining whether a child has received a free and appropriate public education. *Id.* at 25.

In the case before me, there is no dispute that the Parties voluntarily entered into binding settlement agreements. The agreements covered the periods from March 2020 through September 2021. The dispute centers on the enforcement and interpretation of the agreements. As described above, I find that the BSEA does not have authority to interpret or enforce the Parties' settlement agreements. The settlement and mediated agreements do not cover the periods from October 2021 through November 2021. Thus, Parents may pursue their claims with respect to October and November 2021. The agreements also do not address the transportation issue raised by Parents. Therefore, Parents may likewise proceed to Hearing on the issue of transportation.

Parents may seek enforcement of the terms of the settlement agreement in a court of competent jurisdiction.

ORDER

Newburyport's Motion to Dismiss in Part is ALLOWED.

Parents may proceed to Hearing on the issue of Student's services during October 2021 and November 2021 and regarding transportation with respect to her current placement.

So Ordered by the Hearing Officer

Catherine M. Putney-Yaceshyn

Dated: March 15, 2022