COMMONWEALTH OF MASSACHUSETTS

Bureau of Special Education Appeals

Re: Agawam Public Schools BSEA #02-2374

RULING ON SCHOOL'S MOTION TO DISMISS

This matter comes before the Bureau on the School's Motion to Dismiss the hearing request filed by the Parents on December 14, 2001 and the Parents' Opposition thereto. Both Parties were represented by counsel who filed briefs and made oral arguments on the Motion and Opposition on February 11, 2002. This case has an unusual presentation and, as far as can be determined, is one of first impression for the Bureau. It presents an important question regarding the enforceability of a settlement agreement by a Hearing Officer in an IDEA action.

Procedural History

The relevant procedural history may be briefly outlined. On January 10, 2001, the Parents filed a request for hearing at the Bureau of Appeals contending that Agawam had failed to provide a free, appropriate public education for their son. The matter was assigned docket #01-3168. On August 30, 2001, the Student's mother and Agawam's Director of Special Services, Mr. Ponti, signed an agreement purporting to settle all claims which led to the initiation of that special education appeal. Thereafter, the Student began attending the Kildonan School, a private high school for students with learning disabilities, at Agawam's expense. A copy of the Settlement Agreement was forwarded to the Bureau of Appeals on September 10, 2001. The Bureau issued an Order to Show Cause why the case should not be Dismissed on September 12,

2001. Neither party responded to the Order and case # 01-3168 was dismissed "without prejudice," on October 17, 2001.

On December 14, 2001, the Parents filed a request for hearing at the Bureau seeking invalidation of the Settlement Agreement of August 30, 2001, and " retroactive reimbursement for tuition and costs paid to various private schools in past years." The School responded by seeking dismissal of the appeal asserting that all prior claims had been extinguished by the Settlement Agreement which was currently being implemented in good faith by Agawam. [1] Throughout the 2001-2002 school year, the Student has attended the Kildonan School at Agawam's expense. There is a currently accepted IEP providing for the Student's placement at Kildonan.

Legal Arguments

Although framed as a request for a hearing on a matter concerning the Student's entitlement to a free, appropriate public education, the Parents in fact seek a hearing and determination on the validity of the Settlement Agreement dated August 30, 2001. The Parents argue that the Settlement Agreement should be set aside because the Parents' consent to it was involuntary and fraudulently induced. On the other hand, the School's Motion to Dismiss is, in operation, a request for specific enforcement of the same Settlement Agreement. Both Parties' arguments seek to apply common principles of contract law to a privately drafted document not generated nor maintained as part of this Student's educational records. After careful consideration of the parties' arguments, the limited judicial precedent, and the historical policy and position of the

[1] Neither party argued that the Bureau's dismissal of the 01-3168 appeal in October, 2001 barred litigation of underlying issues.

Bureau, I find that these claims are more properly asserted in a court of general jurisdiction.

There are very few cases addressing the issue of whether a Hearing Officer may interpret or enforce a private settlement agreement in the context of an IDEA appeal. Both Parties rely on a case from the U.S. District court in Connecticut which found that an attorney parent who knowingly entered into a financial settlement with a school district, and received the benefits due him when the school district implemented the agreement, was estopped from litigating at the administrative level any IDEA issues arising in the years covered by the settlement. Mr. J. v. Board of Education, 98 F Supp. 2d 226 (D. Conn. 2000). The district court affirmed the actions of the administrative Hearing Officer who had taken extensive testimony on the validity and voluntariness of the settlement agreement. The court also adopted the factual findings of the Hearing Officer on the relevant contract issues.

Agawam argues that the district court in Mr. J. formalized the longstanding policy of administrative acceptance and enforcement of out-of-court settlement agreements in IDEA actions. The Student, going one step further, contends that Mr. J., supra, stands for the proposition that the factors which would lead any court to invalidate a contract, i.e., fraud, mistake, lack of consideration, etc., should be considered by an administrative Hearing Officer in assessing whether to enforce, invalidate or modify a privately negotiated settlement agreement concerning the education of a Student with disabilities.

The district court in Mr. J. relied on an earlier 3rd Circuit decision finding a settlement agreement reached during mediation between a school district and parents in an IDEA appeal enforceable by a court. D.R. v. East Brunswick Board of Education,

109 F 3d 896 (3rd Cir. 1997).[2] In D.R., the parents and school district reached a financial settlement, including public payment for private schooling for a particular school year. During the school year, the student unexpectedly needed a one-to-one aide. The additional personnel was not anticipated by either parent or school district, and each claimed the other was responsible for the additional expense under the settlement agreement. The Parents appealed. Both levels of administrative appeal in New Jersey declined jurisdiction of the matter finding that the private settlement extinguished all issues and operated as "res judicata" for the purposes of an IDEA action. On appeal of the dismissal by the administrative law Judge, the U.S. District court found that "changed circumstances" arising after the settlement agreement required the addition a 1-1 aide to the student's educational program in order to provide FAPE under the IDEA. It further found that because the child had statutory educational entitlements distinct from the Parents interests, the parents could not contractually waive the student's right to receive educationally necessary services.

The district court acknowledged that strict enforcement of the settlement agreement would require it to find the parents responsible for any education –related costs beyond those specifically set out in the agreement, and similarly to find that the school district was not responsible for providing educationally necessary Services not spelled out in the agreement. Finding such a result inconsistent with IDEA guarantees, the district court declined to enforce the agreement.[3]

[2] This matter has a long and complicated procedural history which is summarized at 109 F. 3d 896 (3rd. Cir. 1997) and the one published decision in proceedings below at 838 F. Supp. 184 (D.N.J. 1993)

[3] The district court's decision in D.R v. East Brunswick Board of Education, Civil Action # 94- CVB 4167 (D.N.J., 1995) is unpublished.

The 3rd Circuit reversed, finding insufficient evidence of "changed circumstances" to warrant setting aside a voluntary settlement agreement. D.R., supra. The Circuit court held that the voluntary agreement was a binding contract, and thus enforceable on its face. This result, the court concluded, promoted the federal policy of speedy settlement and enforceability of out-of-court agreements.[4] The court advised, however, in strong introductory text as well as a concluding footnote, that its "holding is limited to the facts of this case and should not be read to extend beyond this case and this agreement. " A sharply worded dissent claimed, however, that the settlement reached by the parties in D.R. could not satisfy the IDEA. Noting that settlement agreements that violate federal public policy or statute may be invalidated. Judge Scirica wrote:

> The IDEA creates certain rights to educational assistance that cannot be waived by the guardians of a handicapped child and certain duties that can not be bargained away by the school boards.

D.R., supra, at 901. I am persuaded that the dissent in J.R. more closely represents the law that would be followed in this jurisdiction than the position taken by either the 3rd Circuit, or the district court in Connecticut, for the for the following reasons.

First, it is important to note that the 3rd Circuit in D.R., supra, did not explicitly address the question of whether an administrative Hearing Officer may interpret or enforce a private agreement under the IDEA. Rather the D.R. court discussed the enforceability of private settlements by a court. As the court in D.R. had an extensive administrative history before it, I find it significant that the 3rd Circuit carefully limited its holding to a "court."

[4] There was no discussion of the role of an administrative Hearing Officer in "enforcement" of private settlements.

Second, the Bureau of Appeals is a specialized administrative adjudicatory body. The Bureau's jurisdiction is limited by statute and regulation to matters which concern the provision of a free, appropriate public education. 34 CFR 300. 507; 603 CMR 28.08 (3). The statutory role of the Hearing Officer is to oversee and enforce the public policy of equal educational opportunity and non-discrimination for students with disabilities. To that end Hearing Officers are charged with engaging in independent fact finding to ensure both that individual student entitlements are fulfilled and public agency obligations are met. To determine whether a settlement agreement provides a free, appropriate public education the Bureau would not use the contract standard of "knowing and voluntary," but rather would look to whether the terms of an agreement provide specialized instruction and support services that were reasonably calculated to permit the student to make meaningful educational progress in the least restrictive environment, the FAPE standard. Any such determination would require a hearing essentially indistinguishable from a hearing on a disputed IEP.

There is no explicit grant of generalized jurisdiction over "education-related" matters to the Bureau in federal or state law. Both parties argue that "judges" commonly construe and enforce special education-related private settlement agreements and that the Bureau, as a matter of policy and efficiency, should do the same. However much we may be flattered by the comparison to "judges," Hearing Officers are Hearing Officers and have legislatively circumscribed jurisdiction. There are other areas of "education-related" law that are reserved to the courts, the award of

money damages or attorneys' fees, for example. Construction of contracts is an area within a court's expertise and power, not necessarily within the Bureau's orbit.[5]

Furthermore, the Bureau has historically declined to enforce private settlements precisely because the parties are free to negotiate items which are not consistent with strict application of IDEA principles. Private parties may agree on terms that are mutually beneficial logistically or financially but which should not be endorsed by a government agent charged with upholding a civil rights statute. It is not uncommon, for example, for a Settlement Agreement to contain a clause in which the parents "waive placement pending appeal," or make a financial contribution to an educational institution. These provisions could not be independently ordered by the Bureau as a "remedy" in an appeal. Nor should they be enforced by the Bureau as a term of a settlement agreement as they abrogate fundamental procedural protections available to the Student under federal and state law.

Finally, the parties argue that the public interest in speedy resolution of special education disputes requires the Bureau to recognize settlement agreements, enforce them when necessary, and resolve disagreements arising under their terms. They contend that presenting these issues to a court would create untenable delays and duplication of scarce resources. They argue that the Third Circuit in D.R., infra, recognized a substantial federal interest in pre-litigation settlement of disputes when it chose to enforce an out-of-court agreement under the IDEA even though the end result was arguably inconsistent with FAPE guarantees.

[5] I note that the First Circuit has in at least one instance recognized an out-of-court, pre-hearing settlement of an IDEA claim. Alison H. v. Byard 163 F. 3d2, (1st Cir. 1998). As that case involved a challenge to the district court's determination on attorneys' fees, there was no relevant administrative Hearing Officer involvement in reaching or implementing the settlement agreement.

The Bureau acknowledges that pre-hearing settlement of special education appeals is common, and indeed necessary, to the functioning of the current administrative dispute resolution system. In this jurisdiction however, the 1st Circuit has historically shown great concern in IDEA matters for the assessment and vindication of individual student interests, regardless of the inconvenience or expense to other parties or interested entities, including the courts.[6] With deference and respect to the 3rd Circuit, I believe that were the 1st Circuit to be presented with a fact pattern similar to that in D.R., and asked to balance competing interests of speedy dispute resolution and strict enforcement of IDEA principles, the 1st Circuit would tip the scales in favor of individual student rights. Due to the caution the 3rd Circuit attached to its own decision, as well as this jurisdiction's historical emphasis on strict adherence to civil rights guarantees, I am not persuaded that the 1st Circuit would follow the 3rd Circuit's lead in enforcing out-of-court IDEA settlements without regard to whether the agreement actually guaranteed FAPE to the individual student.

Based on the discussion above I decline to take jurisdiction of this matter at this time. The parties' presenting claims concern the circumstances surrounding the drafting and signing of a private settlement agreement. They animate a contractual dispute and do not necessarily involve the application or interpretation of federal or state special education law. The extent to which the Student's IDEA claims for "retroactive reimbursement" and compensatory education remain alive for the Bureau to consider will not be discernable until a ruling on the validity of the disputed contract is made.

[6] See e.g. : DOE v. Brookline School Committee, 772 F. 2d 910 (1st Cir. 1983), David D. v. Dartmouth School Committee, 775 F 2d 411 (1st Cir. 1985) cert. den. sub nom Massachusetts Dept. of Educ. v. David D., 475 U.S. 1140 (1986); Roland M. v. Concord Sch. Comm., 910 F. 2d 983 (1st 1990), cert. den. 499 U.S. 912 (1991).

As all potential issues presented here are compensatory in nature, and the Student is currently receiving appropriate special education services pursuant to an accepted IEP, no significant prejudice is likely to result from delay while the Parties seek a decision on the contract matter in the appropriate court. Therefore, the School's Motion to Dismiss is GRANTED, without prejudice.

Date: Lindsay Byrne, Hearing Officer