

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

Student v. Worcester Public Schools

BSEA # 1302473

RULING ON WORCESTER'S MOTION TO DISMISS

PROCEDURAL HISTORY

Parent filed a request for hearing on September 26, 2012 alleging that Worcester has failed to comply with the terms of a settlement agreement signed by the Parties on or about April 30, 2010. Said settlement resolved the issues raised by Parents in the matter docketed as BSEA #10-4158. Parents then filed an amended request for hearing on or about October 12, 2012 in which they increased the amount of reimbursement they sought from Worcester as a result of Worcester's alleged breach of the settlement agreement. Worcester filed a response to the Amended Hearing Request. Worcester filed a Motion to Dismiss and Parents filed their Opposition to it.

WORCESTER'S POSITION

Parents' request for hearing states only contract claims arising from the 2010 settlement agreement. The claims relate solely to the implementation and interpretation of the financial terms of said settlement agreement. The Bureau of Special Education Appeals (BSEA) does not have jurisdiction to address the contract claims or award the relief sought in the request for hearing. Additionally, Worcester argues that the statute of limitations and the specific release language in paragraphs 4 and 7 of the 2010 settlement agreement preclude the Parents from "Re-opening" BSEA #10-4158.

PARENTS' POSITION

Parents claim that the Bureau has jurisdiction to enforce the agreement because it was entered into as the result of a "mediation"¹ presided over by the BSEA's director. They claim that "if the BSEA did not have jurisdiction, it would defeat the purpose of having a venue for adjudicating special education disputes more quickly and inexpensively than state or federal courts permit." They argue that the statute of limitations is "routinely extended when there is a delay in the discovery of the injury or harm for which redress is sought."

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

¹ The agreement was entered into after a *settlement conference* conducted by the BSEA's director during which both parties were represented by experienced counsel.

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.² 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);³ *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

There is disagreement among the hearing officers as to whether the aforementioned statutes and regulations give hearing officers authority to interpret or enforce the terms of a private settlement agreement reached between parties involved in a BSEA hearing outside of the hearing process. Likewise, there is disagreement among the courts with respect to the jurisdiction of hearing officers. 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 grants 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. In the instant case, the Parties have resolved their dispute with respect to education program and placement of the student and memorialized their agreement on April 30, 2010. Both parties have partially performed with respect to the terms of their agreement. There is now a disagreement as to the meaning of some of the terms of the

² See, for example, *In Re: Inessa R. v. Groton Dunstable School District*, BSEA No. 95-3104 (Byrne, November 1995)

³ 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

settlement agreement, and Parents seek to have the BSEA order that Worcester comply with the agreement in accordance with Parents' interpretation of its terms. Alternatively, Parents ask the BSEA to ignore the settlement agreement and reopen the case and/or order Worcester to pay them an amount of money that was never contemplated by the parties.

Under 34 CFR §300.507, although the parties have a right to initiate a hearing on any matter described 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 addresses the authority of hearing officers to review or approve settlement agreements. Also, unlike the case with settlement agreements reached through the mediation⁴ or resolution processes⁵ that provide for review in state or federal court, the IDEA does not specifically address enforcement by hearing officers of private settlement agreements reached by the parties. *Letter to Shaw*, 50 IDELR 78 (2007).

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 by state and federal courts. In the case of *Monson Public Schools*, BSEA #10-5064, the hearing officer also determined that the BSEA does not have jurisdiction over private settlement agreements. In that case, the hearing officer determined that the likely outcome of a hearing to determine the terms of the settlement agreement would be a finding that most of its terms fell short of IDEA requirements rendering it void as against public policy. She noted that the dispute would then begin again, assuming that the statute of limitations did not bar subsequent action. She further noted that the reasonable alternative to the aforementioned outcome would be for a court of competent jurisdiction to utilize its expertise in the interpretation of contract language along with its enforcement powers to resolve the dispute.

Although not binding authority, the Second Circuit has held that a hearing officer has “no authority to enforce” a private settlement agreement “essentially a contract between the parties.” *H.C. v. Colton-Pierrepoint Cent. Sch. Dist.*, 341 Fed. Appx. 687, 689 (2d Cir. 2009). Additionally, a recent Pennsylvania case held that hearing officers lack jurisdiction to enforce a settlement agreement, provides useful guidance on the issue. *J.K. et al. v. The Council Rock School District*, C.A. No.11-942 (E.D.Pa., December 14, 2011.) The *J.K.* court first cited to the statutory language which creates a procedure for the enforcement of settlement agreements

⁴ 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).

⁵ 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).

arising out of mediation and resolution processes by making such agreements “enforceable in any State court of competent jurisdiction or in a district court of the United States.” 20 U.S.C. §§ 1415(e) (2)(F) (iii), 1415 (f)(1)(B)(iii)(II). Next, the court cited to the regulatory language which permits enforcement of resolution session agreements ‘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.’ 34 C.F.R. § 300.510(d)(2). *Id.* at 23. The court then noted that “in the absence of ‘other mechanisms or procedures’ implemented by a state, the exclusive means for enforcing a settlement agreement under the IDEA is ‘in any State court of competent jurisdiction or in a district court of the United States.’” The court stated that it is a “well-settled principle that ‘if there exists a special statutory review procedure, it is ordinarily supposed that Congress intended that procedure to be the exclusive means of obtaining judicial review in those cases to which it applies.’” *Lyons v. Lower Merion[sic] Sch. Dist., No. 09-5576*, slip op. at 6-7 (E.D. Pa. Dec. 14, 2010) (Davis, J.) (quoting *Comp. Dep’t of Dist. Five v. Marshall*, 667 F.2d 336, 340 (3d Cir. 1981)) Thirdly, the court referenced the IDEA’s mandate that hearing officers’ decisions shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. 20 U.S.C. § 1415(f)(3)(E)(i). The court reasoned that enforcement of a settlement agreement may determine if parents have waived specific rights under the IDEA or whether a district has agreed to provide certain benefits above those required by the statute, but it is not related to the fundamental question of whether a child received a free appropriate public education. Finally, the court reasoned that with respect to questions of contract interpretation and enforcement, courts have specialized knowledge and experience which hearing officers do not. *Id.* at 24.

Based upon the foregoing, I find that the BSEA does not have authority to interpret or enforce the terms of private settlement agreements. 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 an “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 a binding settlement agreement. The dispute centers on the interpretation and enforcement of the agreement. As described above, I find that the BSEA does not have authority to interpret or enforce the Parties’ settlement agreement.

In their amended hearing request Parents also seek to set aside the settlement agreement and ask the hearing officer to order the district to pay them an amount far in excess of the amount specified in the settlement agreement and to determine that Worcester did not provide their child with a free appropriate public education. As Worcester correctly argues, these remedies are precluded by both the settlement agreement and the statute of limitations. I have already acknowledged the existence of a binding settlement agreement and determined that the BSEA

does not have jurisdiction to enforce its terms. Parents are essentially asking the hearing officer to re-open BSEA case number 10-4158. I am precluded from doing so based upon the terms of the settlement agreement (See ¶ 4 and ¶ 7 of the Settlement Agreement.) The settlement agreement provides broad releases of claims including the following. “Parents agree to remise, release and forever discharge the Worcester Public Schools, its agents and employees from all demands, debts, actions, causes of action, suits, liabilities and any other claims of any kind, nature and description, both in law and in equity, arising out of claims by Parents relating to the delivery of any and all education services to [Student] prior to the execution of this Agreement, and the payment of costs, transportation costs, attorneys fees, fees of experts and/or evaluations and any other costs except those which are specifically provided in this agreement.” (See Settlement Agreement, ¶ 7.) In paragraph 7 Parents explicitly waived reimbursement for expenses associated with Student’s enrollment at the Victor School. Therefore, Parents’ claims for all unreimbursed educational and legal expenses are specifically barred by their settlement agreement.

Additionally, the statute of limitations bars hearing the claims underlying the Parents’ January 11, 2010 hearing request in the matter of BSEA #10-4158. Both federal law and regulation require that a parent or agency request a hearing within two years of the date on which the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. § 1415(f)(3)(C), 34 C.F.R. 300.511(e). Parents filed the hearing request in BSEA #10-4158 on January 11, 2010 to resolve issues which arose prior to that date. Assuming Parents had not signed a broad release regarding claims relating to BSEA #10-4158, Parents would have had to file their request for hearing prior to January 11, 2012. They filed the hearing request in the current matter on September 26, 2012, over eight months after the two year period had expired. The regulation allows only two exceptions to this rule, one when a parent was prevented from filing a due process complaint based on a specific misrepresentation by the district that it had resolved the issue forming the basis of the complaint, and one when the district withheld information from the parent that was required under the regulations to be provided to the parent. 34 C.F.R. 300.511(f). Parent has neither alleged nor proven the existence of either of these exceptions.

Having found that the BSEA lacks jurisdiction to enforce provisions of a private settlement agreement and having determined that a re-opening of the dispute forming the basis of BSEA #10-4158 is barred by the terms of the settlement agreement and the statute of limitations, I hereby allow Worcester’s Motion to Dismiss this action. Parents may seek enforcement of the terms of the settlement agreement in a court with relevant jurisdiction.

ORDER

Worcester’s Motion to Dismiss is ALLOWED.

So Ordered by the Hearing Officer

Catherine M. Putney-Yaceshyn

Dated: January 23, 2013