

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

**In Re:** Student v.  
Bridgewater-Raynham Regional School District

**BSEA # 1303762**

**Ruling on Parents' Motion For Summary Decision**

Parents filed a Hearing Request in the above-referenced matter on December 3, 2012. On January 4, 2013, Parents filed a Motion for Summary Decision asserting that Bridgewater-Raynham Regional School District's (BR) process for developing Student's IEP and placement so deficient and allegedly contrary to law that the IEP should be rendered null and void. According to Parents, there are no genuine disputes of material facts. As compensation for BR's violations, Parents seek public funding for their unilateral residential placement of Student at the Landmark School for the 2012-2013 school year, and request that the BSEA enter a judgment in their favor as a matter of law pursuant to the IDEA, Section 504 of the Rehabilitation Act of 1973, M.G.L. Chapter 71B, and the regulations promulgated under those statutes.

BR filed an opposition to Parents' Motion on January 8, 2013, asserting that there were genuine issues of material fact raised in Parents' complaint. BR noted that the instant case was like other matters in which parents sought public funding after having placed their child unilaterally in a private school. Central to the equitable relief sought by Parents, as stated in BR's brief, was the determination of whether the IEP it proposed is inappropriate to meet Student's needs in the least restrictive placement, which is a question of fact. Relying on 20 USC §1415(f)(3)(E)(2)(ii)<sup>1</sup> and several court and BSEA decisions<sup>2</sup>, BR further argued that the basis for Parents' request was an alleged procedural violation on the part of BR, which BR

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<sup>1</sup> "Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

- (I) Impeded the child's right to a free appropriate public education;
- (II) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
- (III) Caused a deprivation of educational benefits." 20 USC §1415(f)(3)(E)(2)(ii).

<sup>2</sup> See: *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994-95 (1<sup>st</sup> Cir. 1990); *Burlington v. Mass. Dept. of Education*, 736 F.2d 773, 788 (1<sup>st</sup> Cir. 1984); *In Re: Zelda v. Bridgewater-Raynham Public Schools and Bristol County Agricultural School*, BSEA # 06-0256 (Byrne, 2005); *In Re: Springfield Public Schools*, 11 MSER 1 (2005); BSEA # 04-4706 (Crane, 2005). *In Re: Leonard and Boston Public Schools*, BSEA # 07-4997 (Crane, 2007).

argued would only give rise to an award of compensatory education as an equitable relief<sup>3</sup>, if Parents demonstrated that the alleged procedural violation deprived Student of a FAPE or significantly impeded their participation in the decision-making process regarding Student's education. As such, BR argues that Parents' request for Summary Decision should be denied.

**Ruling:**

The Adjudicatory Rules of Practice and Procedure, applicable to BSEA proceedings<sup>4</sup>, provide that summary decisions may be granted when 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.<sup>5</sup> A party may obtain summary judgment if it can show that the opposing side has no reasonable expectation of proving the essential elements of his/her case.<sup>6</sup> Once the party seeking summary judgment asserts that no genuine issue of material fact exists, the burden shifts to the non-moving party to identify the facts that demonstrate that a trial-worthy issue exists. *Nat'l Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1<sup>st</sup> Cir. 1995). Moreover, "[o]rdinarily, Summary Judgment is appropriate in IDEA proceedings only when the parties agree on all operative facts, supporting that agreement with documents and affidavits, and present a question of law for decision. ... on a motion for summary judgment, all evidence and inferences are to be viewed in a light most favorable to the nonmoving party" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)." *In Re: Norfolk County Agricultural School*, BSEA # 06-0390 (Berman, 2005).

In addressing motions for summary decision, the First Circuit Court of Appeals has explained that,

This burden is discharged only if the cited disagreement relates to a genuine issue of material fact. In this context, "genuine" means that the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party and "material" means that the fact is one that might affect the outcome of the suit under the governing law. This requirement has sharp teeth: the [non-moving party] must present definite, competent evidence to rebut the motion. Such evidence cannot be conjectural or

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<sup>3</sup> "Compensatory education is an equitable remedy involving discretion in determining what relief is appropriate after consideration of all aspects of the case. *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005); *Phil v. Mass. Dept of Ed.*, 9 F.3d 184, 188 n.8 (1<sup>st</sup> Cir. 1993)." *Leonard and Boston Public Schools*, BSEA 07-4997 (Crane, 2007).

<sup>4</sup> 801 CMR 1.01(7)(h) which govern BSEA proceedings pursuant to 603; CMR 28.08(5)(b).

<sup>5</sup> See also Rule 56(c) of the Federal Rules of Civil Procedure.

<sup>6</sup> See *Kourovacilis v. General Motors Corp.*, 410 Mass 709 (1991).

problematic; it must have substance in the sense that it limns differing versions of the truth which a fact finder must resolve at an ensuing trial. As the [United States Supreme] Court has cautioned, evidence that is merely colorable or is not significantly probative cannot deter summary judgment. *Wynne v. Tufts University school of Medicine*, 976 F.2d 791, 794 (1<sup>st</sup> Cir. 1992).<sup>7</sup>

With this guidance in mind, and in consideration of the arguments offered by the Parties, I find that BR is correct in that there are significant issues of material fact which are central to the determination in the instant case and as such Summary Judgment as a matter of law is not warranted. Parents' claims will be heard at a Hearing on the merits which date will be set at the Pre-Hearing Conference scheduled for February 14, 2013.

**ORDERS:**

1. Parents' Motion for Summary Judgment is DENIED.

So Ordered by the Hearing Officer,

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Rosa I. Figueroa

Dated: January 18, 2013

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<sup>7</sup> See *Boston Public Schools and Albert*, 12 MSER 221 (Crane, 2006).