

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

In RE: Student and Sudbury Public Schools

&

BSEA #1305313

Lincoln-Sudbury Regional School District

RULING ON LINCOLN-SADBURY'S MOTION TO DISMISS

This matter comes before the BSEA on the Motion of the Lincoln-Sudbury Regional School District ("Lincoln-Sudbury) to Dismiss the Parents' Hearing Request as to it. Both the Parents and the Sudbury Public Schools ("Sudbury") oppose the dismissal of Lincoln-Sudbury. All Parties submitted briefs in support of their respective positions. Additional oral arguments were offered during a conference call held on February 25, 2013. The pertinent procedural and factual background is briefly summarized below.

The Parents filed a Hearing Request on February 7, 2013 seeking a determination that Sudbury violated the IDEA, Section 504 and M.G.L.c.71B by failing to offer the Student a free appropriate public education during the 2010-2011 and 2011-2012 school years. The Parents seek an Order requiring Sudbury and Lincoln-Sudbury to provide both compensatory education and reimbursement for expenses incurred by the Parents in unilaterally securing an appropriate educational placement for the 2012-2013 school year.

Most of the factual assertions set out in the Parents' Hearing Request are disputed by Sudbury and Lincoln-Sudbury. It is not disputed, however, that the Student is, and has been at all relevant times, a resident of Sudbury. Nor is it disputed that Sudbury is responsible for providing elementary educational services to all resident children, including students with disabilities, through the 8th grade level. It is also not disputed that Lincoln-Sudbury is responsible for providing educational services to residents of Sudbury beginning in the 9th grade.

According to the Parents' Hearing Request, the Student was evaluated independently in December 2010 and diagnosed with ADHD, Major Depressive Disorder, Anxiety Disorder, Mixed Personality Disorder and Disruptive Behavior Disorder. After the evaluation Sudbury developed a Section 504 Plan which was implemented during the remainder of the 2010-2011 school year. The Student was enrolled in the 8th grade in Sudbury during the 2011-2012 school

year. Despite implementation of the Section 504 Plan the Student continued to display difficulties consistent with her diagnosed disabilities. She demonstrated substantial academic and organizational weaknesses, significant behavioral and emotional difficulties, was a victim of bullying in and out of school, and refused to attend school, resulting in more than 30 absences and a similar number of tardies. Sudbury was made aware of the Student's continued and increasing difficulties by the Student and her Parents. Though there were meetings with guidance and administrative staff on several occasions throughout the 2011-2012 school year Sudbury did not suggest evaluating the Student for eligibility for IDEA services. Towards the end of the school year Sudbury advised the Parents to withdraw the Student from school and took no further action to evaluate or to address her then current learning needs. Sudbury promoted the Student to the 9th grade at the end of the 2011-2012 academic year.

Lincoln-Sudbury did not participate in any educational planning for the Student during the 2011-2012 school year. In September 2012 Lincoln-Sudbury offered to evaluate the Student for eligibility for IDEA services.

On August 2, 2012 the Parents rejected the Section 504 Plan developed by Sudbury and notified Sudbury of the Student's unilateral placement at the New Haven Residential Treatment Center in Utah. The Student is "repeating" the 8th grade at New Haven.

Positions of the Parties

The Parents assert that the Student's current grade placement is a matter of contested fact which must be resolved through the Hearing process. They argue that they have valid claims against both Sudbury and Lincoln-Sudbury and that both should participate in the due process procedures to appropriately evaluate and apportion their respective spheres of responsibility.

Sudbury, while disputing some of the factual assertions set out in the Parents' Hearing request, acknowledges that it is the local educational agency responsible for the Student during the 2010-2011 and 2011-2012 school years. Sudbury argues that its responsibility ended when the Student was promoted to the 9th grade at the conclusion of the 2011-2012 school year. Thus it is not responsible for determining the Student's current eligibility for IDEA services or for providing any regular or special education to her during the 2012-2013 school year.

Lincoln-Sudbury avers that it has no responsibility for any potential past substantive or procedural missteps as Lincoln-Sudbury does not provide any educational services to Sudbury residents until they enroll in the 9th grade. Lincoln-Sudbury argues that the Student is currently attending an 8th grade program, has not enrolled in Lincoln-Sudbury, and therefore remains the responsibility of the Sudbury Public Schools.

Legal Framework

A Motion to Dismiss may be granted if the party requesting the hearing fails to state a claim for which relief is available through the BSEA. 801 CMR 1.01 (7) (g) (3); BSEA Hearing Rules XVII (B) (4). See also F.R.C.P. Rule 12 (b) (6) and M.R.C.P. Rule 12 (b) (6). Dismissal

on pleadings is disfavored. In considering whether dismissal is warranted a Hearing Officer must accept all factual allegations set forth in the petitioner's hearing request as true. Similarly, the Hearing Officer must resolve all factual inferences and/or inconsistencies, as well as the veracity or provability of a factual claim, in favor of the non-moving party. If those facts, proved at a hearing, would entitle the non-moving party to any form of relief from the BSEA, then dismissal for failure to state a claim is not appropriate. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Ocasio-Hernandez v. Fortunato-Burset*, 640 F.3d. 1 (1st Cir. 2011); *Doe v. Attleboro*, 2011 U.S. Dist. LEXIS 98235 (D. Mass. 2011) (not in official reporter).

Conclusion and Order

Here the Parties agree that the Student's grade placement is in dispute. They also agree that the fact of the Student's grade placement determines legal responsibility for her 2012-2013 educational placement. Lincoln-Sudbury seeks dismissal asserting that it is responsible for Sudbury residents only when they are enrolled in the 9th grade, that the Student is an 8th grade student and, therefore, that Lincoln-Sudbury is not responsible for determining or providing any educational services to her. Both Sudbury and the Parents claim that Sudbury "promoted" the Student to the 9th grade thereby automatically triggering Lincoln-Sudbury's obligations towards the Sudbury resident. Whether that "promotion" occurred, whether the action was consistent with Sudbury's school policies, what effect Sudbury's action or inaction might have on the Student's Section 504 and IDEA claims, the existence and import of policies or regulations governing promotion or transfer of students between Sudbury and Lincoln-Sudbury and what effect the election to provide 8th grade level services to the Student at a private school during the 2012-2013 school year may have on the status and claims of the Parties, are all factual questions to be resolved at Hearing. Further, they are questions that cannot be fully answered without the participation of the Lincoln-Sudbury Regional School District in this Hearing. Therefore I find that the Parents have stated a viable IDEA claim, and have offered factual allegations to support that claim, sufficient to defeat Lincoln-Sudbury's Motion to Dismiss.

ORDER

The Motion of the Lincoln-Sudbury School District to Dismiss the Parents' Hearing Request as to it is DENIED.

By the Hearing Officer

Lindsay Byrne
Dated: March 7, 2013

