

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

Student v. Boston Public Schools

BSEA# 1307720

RULING ON SCHOOL'S MOTION TO DISMISS BSEA APPEAL

This ruling is rendered pursuant to Massachusetts General Laws Chapters 30A; 71B; 20 U.S.C. Section 1400 et seq.; 29 U.S.C. Section 794; and the regulations promulgated under these statutes.

STATEMENT OF THE CASE

Student is a nine year old boy who has recently completed the fourth grade within the Boston Public Schools (BPS). He presents with Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS), manifested by difficulties with self-regulation and executive functioning, which impact his ability to access the curriculum. He has attended BPS throughout his academic career, and has always been a special education student with an Individual Education Program (IEP). In November 2011, while in third grade, Student was allegedly assaulted by his teacher, an employee of BPS. As a result Student suffered personal injuries and has experienced severe emotional distress for which he has required therapy, and which has interfered with his ability to access the curriculum.

Parent's Hearing Request is initiated to satisfy the exhaustion requirement of the IDEA prerequisite to the filing of a suit in federal court to recover monetary damages under 42 U.S.C. Section 1983 for claims arising from the denial of a free and appropriate education (FAPE), as well as violation of the Americans With Disabilities Act (ADA), Section 504, and the 14th Amendment of the U.S. Constitution.

It is well established in the First Circuit that before any action for damages may be brought in federal court, the party seeking review must exhaust all administrative procedures under the IDEA. This exhaustion requirement applies to actions brought under the IDEA, the ADA, Section 504, or any Section 1983 claims based upon violation of a student's IDEA rights. See *Frazier v. Fairhaven School Committee*, 276 F.3d. 52 (1st Cir.2002); *Bowden v. Dever*, 2002 WL 472293 (D Mass 2002) and 8 MSER 90 (2002); and *CBDE Public Schools v. Mass. Bureau of Special Education Appeals*, 2012 WL 4482296 (D Mass 2012).

SCHOOL'S POSITION

In its Motion to Dismiss (MTD), BPS contends that exhaustion is not required in this case. BPS argues that unlike *Frazier*, *Bowden*, and *CBDE* (which involved rejected IEPs and/or contested educational

services, warranting the expertise of the BSEA to provide a record upon which the Court could rely), the instant case does not claim an educational dispute necessitating the in-depth fact finding process of an administrative appeal before the BSEA. BPS contends that neither the IEP then in place, nor any following IEPs, have been rejected by Parent in this matter. BPS further contends that Parent lays out a plausible claim for damages unrelated to deprivation of FAPE. Therefore, the IDEA does not require Parent to exhaust administrative remedies before proceeding to federal court.

PARENT'S POSITION

Parent Opposes BPS' MTD. Citing *Frazier, Bowden, and CBDE* Parent argues that under precedent established within the First Circuit, exhaustion of administrative remedies is required before a parent may file a lawsuit in federal court to recover monetary damages for claims arising from the denial of FAPE, Section 504, and the ADA. Parent claims that BPS deprived Student of FAPE as a result of the November 2011 assault, battery, and verbal abuse by his teacher, as well as by subsequent treatment within his BPS classroom, resulting in Student's emotional and behavioral deterioration which necessitated his removal from school for May and June 2012. Parent is not claiming that the IEP at the time of the alleged assault and battery was inappropriate and notes that the proposed services and placement set forth in the IEP were acceptable as written. Parent's claim is that the harm to Student was caused by BPS' actions, omissions and flawed implementation of the IEP.

RULING

Based upon the written arguments submitted by the parties, the oral arguments advanced by the parties at the motion session on July 8, 2013, and a review of the applicable law, I rule that BPS' MTD this BSEA Appeal must be **DENIED**.

My analysis follows.

In *Frazier*, the First Circuit Court of Appeals reasoned that exhaustion remained beneficial even if the administrative process could not grant the form of relief (money damages) sought by the Plaintiff because it provided a "factfinder versed in the educational needs of a disabled child" to hear the dispute and develop a factual record which would ultimately be beneficial to a court hearing a claim for damages. *Frazier at 62*. The First Circuit held that even though the BSEA could not award damages it could still assert jurisdiction over IDEA claims that seek only monetary relief, could enter findings that the school system violated the student's rights, and that the court "would have to accord considerable respect to such a finding." *Frazier at 64*. The First Circuit held that a parent who alleges that local education officials have denied the student the right to a FAPE may not bring suit for monetary damages under 42 U.S.C. Section 1983 without first exhausting the administrative process established by the IDEA. *Frazier at 56*. The court also required exhaustion for violations of federal law under section 504 (29 U.S.C. Section 794) that are "rooted in alleged violations of the IDEA." *Frazier at 64*.

In *Bowden*, the U.S District Court further ruled that any aspect of the school's treatment that interferes with the provision of FAPE is within the scope of the IDEA's administrative procedures; that when ADA and 504 claims allege that the school's physical and psychological abuse interfered with a child's right to

an equal education, these are charges for which the IDEA procedures would have provided relief; and that where a student claims that his right to a FAPE has been violated by the actions or policies of school personnel and administrators, it is subject to the exhaustion requirement of the IDEA. *Bowden* at 8 MSER p. 92-93.

In *CBDE*, the U.S District Court reiterated the crucial elements of both *Frazier and Bowden* and extended the administrative exhaustion requirement to school districts which file a lawsuit in response to a parent's due process filing.

In summary, *Frazier, Bowden, and CBDE* make it clear that in the First Circuit, where parents' claims are based upon the denial of FAPE, exhaustion of procedures available under the IDEA, not merely an exhaustion of remedies, is mandatory.

In the instant case, Parent's claims, although monetary, are clearly grounded in the alleged denial of FAPE to Student-specifically that the teacher's actions toward Student and subsequent actions in class toward Student caused him physical, emotional, and behavioral harm and constituted a denial of FAPE under the IDEA. Parent also claims that student was discriminated against based upon his disability under 504. Therefore, I find that the alleged harm to Student is directly related to his status as a special education student in a substantially separate special education classroom, taught by a special education teacher and special education staff. Under such circumstances, *Frazier, Bowden, and CBDE* mandate exhaustion of administrative procedures prior to any court action.

ORDER

BPS' Motion to Dismiss BSEA# 1307720 is **DENIED**.

By the Hearing Officer,

Raymond Oliver

Dated: July 31, 2013