

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In RE: Sohail ¹

&

BSEA #1310012C

Pembroke Public Schools

DECISION

This Decision is issued pursuant to M.G.L. c. 71 B and 30 A, 20 U.S.C. 1401 *et seq.*, 29 U.S.C. 794, and the regulations promulgated under those statutes. A Hearing was held on October 28, 2014 at the Bureau of Special Education Appeals (hereinafter “BSEA”) in Boston, MA. Those present for the proceedings were:

Jessica Duncanson
Paula Radzevich
Jane Williamson
Lindsay Byrne

Director of Student Services, Pembroke Public Schools
Special Education/Reading Teacher- Pembroke
Court Reporter
Hearing Officer

The Parent did not attend the Hearing. The Parent did not submit any documents conforming to BSEA Rule IX as proposed exhibits, nor did she present any witness testimony. Neither Party was represented by an attorney or advocate. The official record of the Hearing consists of documents submitted by the School marked S-1 through S-14 and approximately one and one-half hours of recorded oral testimony and argument. The Hearing Officer also takes administrative notice of the two BSEA Decisions previously issued in this matter: BSEA #13-10012 issued on October 31, 2013 by Hearing Officer William Crane and BSEA #13-10012C issued on March 26, 2014 by Hearing Officer William Crane. The record was held open for ten days after receipt of the Court Reporter’s transcript of the October 28th Hearing to permit the Parent additional time to submit evidence and/or arguments in support of the relief she sought. The Parent submitted a letter on November 12, 2014. The School did not submit any additional argument. The record closed on November 13, 2014.

¹ “Sohail” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

ISSUE²

Whether the Pembroke Public Schools has complied with the previous Decisions issued in this matter on March 26, 2014 and on October 31, 2013?

FINDINGS OF FACT

The record shows no significant factual dispute. Most of the facts recited below are taken from the Decisions previously issued in this matter.

1. Sohail is a 16 year old 11th grade student at the Pembroke High School. He has a Specific Learning Disability (Dyslexia), an Auditory Processing Disorder and a Communication Disorder with a history of severe difficulty acquiring basic literacy skills. The last IEP accepted by the Parent, for the 2012-2013 school year, places Sohail in a substantially separate language based classroom for most academic instruction. In addition Sohail receives academic support in a Learning Center for six days of every seven school day cycle. He also receives 1:1 or 1:2 specialized reading instruction for five of every seven school days. This level and type of special education service has continued to date. BSEA # 13-10012 (Crane, Oct. 31, 2013)³

2. During the 2012-2013 school year Pembroke proposed Amendments to the 2012-2013 IEP reflecting the recommendations of the Parent's independent evaluator for an increase in direct reading instruction. The Parent accepted the Amendment but requested a hearing asserting deficiencies in Pembroke's school year and extended year services. A Hearing was held on October 15, 2013. In the Decision issued on October 31, 2013 the Hearing Officer found Pembroke's program largely appropriate. He ordered two changes to the 2012 – 2013 IEP:

- 1) a LIPS evaluation and provision of any LIPS services that might be recommended as a result; and
- 2) incorporation of a reading fluency program, such as READ Naturally, into the direct reading instructional session at least twice weekly. (BSEA# 13-10012, October 31, 2013; S-1) (BSEA #13-10012 (Crane, Oct. 31, 2013).)

3. An IEP reflecting the services the Hearing Officer found to be appropriate, as well as the Amendments ordered by the Hearing Officer, was developed by Pembroke and proposed to the Parent on November 5, 2013. The Parent has taken no action on that proposed IEP. (S-2; Duncanson).

4. Thereafter the Parent asserted that Pembroke failed to comply with the October 31, 2013 Decision issued by the Bureau. A Compliance Hearing was held on March 13, 2014. The

² The sole issue here was articulated in the Parent's Hearing Request of July 28, 2014 and confirmed in prehearing Orders issued by the BSEA on August 20, 2014 and September 17, 2014.

³ 19 MSER 299 (2013).

Decision in BSEA # 13-10012C⁴, issued on March 26, 2014, found that Pembroke had complied with the underlying Decision by both incorporating a structured reading fluency program into Sohail's direct, individual reading instruction and by timely arranging and funding a LIPS evaluation for Sohail. The Decision noted that the LIPS evaluation recommended additional services but did not recommend LIPS instruction. The School's attempts to convene a Team meeting to determine the type and extent of explicit instruction that would be consistent with the findings of the LIPS evaluation were thwarted by the Parent. The Hearing Officer found that the failure to convene a Team meeting was the result of a parental misunderstanding and not due to any Pembroke action or inaction, and that a scheduled facilitated Team meeting would cure any potential procedural defect. (BSEA #13-10012C (Crane, March 26, 2014); Duncanson.)

5. A facilitated Team meeting took place on April 9, 2014. The Parties agreed to a plan to provide fifty hours of Lindamood Bell instruction to Sohail over the course of the summer 2014 in lieu of any other extended year services. The Parent's signature appears on that agreement. Sohail participated in the Lindamood instruction for the allotted fifty hours during the summer 2014. (S-8; S-7; Duncanson; Radzevich)

6. Paula Radzevich, Sohail's direct reading teacher during the 2013-1014 school year, testified that she used both the Orton-Gillingham method and materials and the READ LIVE/READ NATURALLY fluency program with Sohail. She testified that Sohail made considerable progress in reading skills over the course of the school year. He could access the regular 10th grade level curriculum and benefit from it, earning A's and B's in mainstream courses. He passed the English Language Arts MCAS administered in spring 2014. (Radzevich; S-13; S-14)

7. The Team reconvened on October 23, 2014 to develop an IEP for the 2014-2015 school year. Ms. Radevich testified that the goals and benchmarks were updated to reflect Sohail's progress but that the type and level of special education services, and the placement, were unchanged from the IEP proposed in November, 2013. (Radzevich)

FINDINGS AND CONCLUSIONS

After a careful review of the evidence produced at the Hearing, with particular attention to any potential inferences that could be drawn in the Parent's favor from the undisputed facts, as well as to any arguments that could be made by the absent and unrepresented appealing Parent, it is my determination that the Parent has failed to carry her burden of proving that Pembroke has not complied with the BSEA Decisions issued in this matter on October 31, 2013 and March 26, 2014. *Schaffer v. Weast*, 546 U.S. 49 (2005). Indeed all the evidence in the record supports the conclusion that Pembroke swiftly and fully complied with the Hearing Officer's October 31, 2013 directives, that Pembroke attempted on numerous occasions to align the IEP and associated special education procedures with the findings of the BSEA, and that any procedural misstep during the 2013-2014 school year is attributable to the Parent's misunderstanding and oppositional actions. Hearing Officer William Crane so found when he determined, in March

⁴ 20 MSER 60 (2014).

2014, that Pembroke had fully complied with his earlier Decision. There is no subsequent countervailing evidence.

Furthermore, the evidence convincingly supports the finding that Pembroke's responsive actions and targeted services resulted in a significant educational benefit to Sohail as he demonstrated progress in both the special education and regular education settings and on standardized measures of achievement. The Parents' arguments to the contrary find no support in this record.

Having provided the two discrete special education services ordered by the BSEA in October 2013, while continuing to offer Sohail the free appropriate public education approved at that time by the BSEA, Pembroke has maintained compliance at all times with the BSEA Decisions.

ORDER

Pembroke Public Schools is in compliance in all respects with the previous BSEA Decisions in this matter issued on October 31, 2013 and March 26, 2014.

By the Hearing Officer

Lindsay Byrne
Dated: November 25, 2014