

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals
Bureau of Special Education Appeals

In Re: Brockton Public Schools

BSEA#: 14-01968

RULING

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC section 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL c. 71B), the state Administrative Procedure Act (MGL c. 30A) and the regulations promulgated under these statutes.

The parties appeared for Hearing on November 19, 2013 in Boston, MA before Ann F. Scannell, Hearing Officer. Those present were:

Peter's¹ Mother

Peter's Father

Olga Garriga

Michelle Lanner

Laurie Mason

Dorothy Pepin

Paige Tobin

Assistant Director, Brockton Public Schools

Out of District Coordinator, Brockton Public Schools

Director of Special Education, Brockton Public Schools

Director of Administration, Lighthouse School

Attorney, Brockton Public Schools

INTRODUCTION

Peter is an eleven year old boy who resides with his mother in Brockton. He has been diagnosed with Autism Spectrum Disorder and he also has cognitive disabilities which impact his ability to access the curriculum.

On November 4, 2013, Peter's mother filed a Hearing Request with the Bureau of Special Education Appeals. She was seeking an order that her son be placed in the day program at Lighthouse School. She also requested that the matter be expedited. This matter was granted expedited status on November 5, 2013 and scheduled for Hearing on November 19, 2013. On November 12, 2013, Brockton Public Schools ("Brockton") filed a response to the Hearing Request indicating that it remained ready and willing to place Peter in an appropriate day program.

On November 19, 2013, prior to the start of the Hearing, Brockton Public Schools moved that the matter be dismissed on the grounds that there were no longer any issues to litigate and the

¹ Peter is a pseudonym used for confidentiality and classification purpose in publicly available documents.

case was now moot. After hearing arguments from the parties, the Hearing Officer orally granted Brockton's Motion to Dismiss. This Ruling is written to memorialize the Hearing Officer's verbal determination and to set forth the legal basis for same.

DISCUSSION

The parents sought the following relief from the BSEA:

1. To place Peter in Lighthouse School immediately pursuant to the last agreed IEP Lighthouse reviewed prior to accepting him, and to convene a TEAM to develop a new IEP after 45 days of enrollment.
2. To order Brockton to act in good faith so that Peter would receive FAPE.
3. To be a member of the team that will develop Peter's IEP.
4. To order Brockton to allow the Lighthouse School to include Peter's Home Progress Report as part of his records.
5. To order Brockton to pay for transportation to and from the day placement.

Brockton agreed to all of the parents' requests for relief, recognizing, however, that it could no longer place Peter at Lighthouse because as of November 13, 2013, Lighthouse no longer had any openings.² Brockton further agreed to continue their efforts to immediately place Peter in an appropriate day placement.³ Home tutoring was offered on an interim basis pending Peter's placement in a day program, however, Peter's Mother declined such service. She indicated she would complete the appropriate paperwork to home school her son.

Brockton further agreed to continue to act in good faith to provide Peter a FAPE, agreed that Peter's Mother continues to be a member of the TEAM in all respects, including participating in the IEP process, agreed to include Peter's Home Progress Report as part of his records and agreed to fund transportation to and from Peter's day placement.

Brockton argues that since it has agreed to all the relief the parents are seeking through their Hearing Request, there are no issues left to litigate and therefore, the Hearing Request should be dismissed. I agree with Brockton. There is no longer any issue left to litigate before the BSEA. All of the issues pending before the the BSEA have been resolved and there is no further relief that the BSEA can order. This matter is, therefore dismissed.

ORDER

Having found that there are no remaining issues before the BSEA, this matter is moot and is therefore, hereby Dismissed with prejudice.

² On October 25, 2013, Lighthouse School wrote to Peter's mother outlining action she needed to take to secure Peter's acceptance at Lighthouse. Peter's Mother took no action.

³ Brockton indicated that there was an opening at May School for Peter and he was a potential candidate for admission to the Higashi School. These schools were waiting for consent from Peter's Mother.

So Ordered by the Hearing Officer,

Ann F. Scannell

Dated: November 20, 2013