

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

In Re: Greater New Bedford Regional Voc. Tech.

BSEA # 1402775

RULING ON MOTIONS

This ruling is issued by the Bureau of Special Education Appeals (BSEA) pursuant to the Individuals with Disabilities Education Act (20 USC 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.

This dispute requires that I rule on Greater New Bedford Regional Vocational Technical High School's (GNBVT) Motion to Dismiss and Motion for More Definite Statement. Parents filed no written opposition and a telephonic motion hearing occurred on October 28, 2013.¹

MOTION TO DISMISS

Student lives with her Parents in New Bedford and is a junior at GNBVT for the 2013-2014 school year, which is her third year at GNBVT. The proposed IEP for Student for the 2013-2014 school year would place Student back at the New Bedford High School. Parents seek to have Student continue at GNBVT for the 2013-2014 school year, and they have filed a Hearing Request with the BSEA for that purpose. Parents also have compensatory claims based, in part, on alleged systemic policies and practices of GNBVT.

Parents' Hearing Request is nearly identical to a Hearing Request that they filed against GNBVT on May 16, 2013 in BSEA # 1308227. On September 24, 2013, Parents withdrew their previous Hearing Request, thereby closing that case before the BSEA. On October 2, 2013, Parents filed their Hearing Request in the instant dispute.

In the previous dispute (BSEA # 1308227), GNBVT filed a motion to dismiss nearly-identical to its present Motion to Dismiss and I ruled on that previous motion through a ruling dated July 24, 2013.

The parties do not deny that the doctrine of collateral estoppel applies. Collateral estoppel has typically been applied within the context of litigation in court, but the doctrine applies

¹ Parents and Student are represented by attorney Michael Turner. GNBVT is represented by attorney Paige Tobin and attorney Julie Muse-Fisher.

equally to a BSEA Hearing Officer's decision regarding special education disputes.² Under the doctrine of collateral estoppel, "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case."³ In short, collateral estoppel "means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit."⁴

The similar doctrine in Massachusetts is issue preclusion.⁵ "[T]he issue in the prior adjudication [must have been] identical to the issue in the current adjudication ... [and] the issue decided in the prior adjudication must have been essential to the earlier judgment."⁶ Issue preclusion bars relitigation of those issues even in the context of a suit based on an entirely different claim.⁷

I find that the parties in BSEA # 1308227 are identical to the parties in the instant dispute. I further find that Parents' Hearing Request in the instant dispute is nearly identical to the Hearing Request filed in BSEA # 1308227. To the extent that the issues addressed in my ruling of July 24, 2013 in BSEA # 1308227 are identical to the issues raised in GNBVT's current Motion to Dismiss, I find that my July 24, 2013 ruling governs these issues.

The July 24th ruling concluded with the following order relevant to GNBVT's previous motion to dismiss, and this order applies to the instant ruling, with several specific exceptions noted below:

GNBVT's Motion to Dismiss is ALLOWED with respect to Parents' systemic claims regarding admission policies and practices, and with respect to any other systemic claims unrelated to the alleged violations of Student's right to receive FAPE and to be free from discrimination under Section 504, as set forth within the Hearing Request. The Motion to Dismiss is otherwise DENIED. However, I will not find facts under the ADA or Article CXIV, or determine whether there was a violation of the ADA or Article CXIV.

² See *Kobrin v. Board of Registration in Medicine*, 444 Mass. 837, 844 (2005) ("final order of an administrative agency in an adjudicatory proceeding ... precludes relitigation of the same issues between the same parties, just as would a final judgment of a court of competent jurisdiction"). The BSEA has applied these doctrines in *In Re: Harwich Public Schools*, BSEA # 08-1670 (2/1/08) and *In Re: Neville & Sutton Public Schools*, BSEA # 07-7534 (11/2/07).

³ *Kobrin v. Bd. of Registration in Med.*, 444 Mass. at 844.

⁴ *Jackson v. Coalter*, 337 F.3d 74, 85 (1st Cir. 2003) (quoting *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970)).

⁵ See *Kobrin v. Bd. of Registration in Med.*, 444 Mass. 837, 843-844, 832 N.E.2d 628, 634 (2005) (discussed in *In re Sonus Networks, Inc., Shareholder Derivative Litigation*, 499 F.3d 47, 56 -57 (1st Cir. 2007)).

⁶ *Tuper v. North Adams Ambulance Serv., Inc.*, 428 Mass., 132, 134-135, 697 N.E.2d 983 (1998) (internal citations omitted).

⁷ See *Kobrin v. Bd. of Registration in Med.*, 444 Mass. at 843-844.

There are several issues that Parents, through their Hearing Request in the instant dispute, have raised for the first time and therefore were not addressed through my motion to dismiss ruling of July 24, 2013. Specifically, Parents raise the following claims for the first time.

Parents ask that the BSEA make findings of fact and rulings of law that GNBVT violated “RICO, MGL c. 69 and all Federal Civil Rights Status [sic].”

Assuming that RICO refers to the Racketeer Influenced and Corrupt Organizations Act, I find that the BSEA does not have jurisdiction to consider RICO, and Parents do not argue otherwise. Accordingly, any claims under RICO are therefore dismissed.

I further find that the reference to “all Federal Civil Rights Status [sic]” which presumably is intended to refer to all federal civil right statutes, is far too vague and general to provide effective notice to GNBVT or to be considered by me. These claims are therefore dismissed.

Finally, I consider any claims under MGL c. 69. During oral argument, Parents’ attorney specifically relied upon MGL c. 69, § 1, which provides in relevant part as follows:

It is hereby declared to be a paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children ... including a school age child with a disability as defined in section 1 of chapter 71B the opportunity to reach their full potential and to lead lives as participants in the political and social life of the commonwealth and as contributors to its economy.

GNBVT takes the position that there is no private right of action and the BSEA has no authority to enforce this statutory standard, which applies to both regular education and special education students. However, it is not disputed that a BSEA Hearing Officer has jurisdiction to determine whether GNBVT has complied with its responsibilities under the state definition of FAPE, which reads as follows:

“Free appropriate public education”, special education and related services as consistent with the provisions set for in the 20 U.S.C. 1400 et seq., its accompanying regulations, and which meet the education standards established by statute or established by regulations promulgated by the board of education. [Emphasis supplied.]⁸

Thus, FAPE explicitly includes state statutory education standards, and MGL c. 69, § 1 is one such standard.

For these reasons, I find that Parents’ claims under MGL c. 69, § 1 may not be dismissed.

⁸ MGL c. 71B, § 1.

ORDER RE MOTION TO DISMISS

GNBVT's Motion to Dismiss is ALLOWED with respect to

1. Parents' systemic claims regarding admission policies and practices;
2. any other systemic claims unrelated to the alleged violations of Student's right to receive FAPE and to be free from discrimination under Section 504, as set forth within the Hearing Request;
3. Parents' claims under the Racketeer Influenced and Corrupt Organizations Act; and
4. Parents' claims under "all Federal Civil Rights Status [sic]".

The Motion to Dismiss is otherwise DENIED. However, I will not find facts under the ADA or Article CXIV, or determine whether there was a violation of the ADA or Article CXIV.

MOTION FOR MORE DEFINITE STATEMENT

GNBVT has filed a Motion for Definite Statement, the principal purpose of which is to require Parents to identify the specific systemic policies and practices which Parents claim GNBVT has violated. Parents have not sought to argue against the need for such a more definite statement of their claims.

Accordingly, on or before November 12, 2013, Parents shall file a more definite statement of their claims. Such more definite statement shall include, but need not be limited to, the following:

1. Parents shall specifically identify and describe each policy and practice which Parents claim has caused or contributed to the alleged violations of Student's right to receive FAPE or to be free from discrimination under Section 504, as set forth within the Hearing Request.
2. For each such policy and practice, Parents shall explain how it caused or contributed to the alleged violations of Student's right to receive FAPE or to be free from discrimination under Section 504, as set forth within the Hearing Request.

SCHEDULING ORDER

By agreement of the parties, this matter is scheduled to proceed to hearing on January 13, 14, 15 and 16, 2014 from 9:30 AM to approximately 5:00 PM (or later as necessary to complete the Hearing within the allotted number of four Hearing days) at the Bureau of Special Education Appeals, One Congress Street, 11th Floor, Boston, MA.

Each party shall complete the presentation of its case, including a reasonable amount of cross-examination by the opposing party, within two Hearing days so that this matter may be

completed on January 16, 2014. The parties shall be prepared to stay late, if necessary, for this purpose.

Each party shall provide to the opposing party and to the Hearing Officer all documents (and any other evidentiary material such as videotapes) to be introduced at the Hearing and a list of witnesses to be called at the Hearing. These documents and the witness list shall be received by the opposing party and Hearing Officer no later than 5:00 PM on January 6, 2014 in order to comply with the state and federal regulatory requirements regarding notice.

By the Hearing Officer,

William Crane

Dated: October 30, 2013