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

In Re: Wayland School District **BSEA # 1403324**

RULING ON MOTION TO DISMISS

Introduction

This Ruling addresses the question of whether by signing a mediation agreement pursuant to which the School District agreed to fund a particular private school that accepted Student, Parents waived any right to public funding of a different private school.

On October 30, 2014, Parents filed a hearing request with the Bureau of Special Education Appeals (BSEA). The Wayland School District (Wayland) filed a response and a Motion to Dismiss, seeking to dismiss all of Parents' claims on the basis of a prior written agreement between the parties. Parents filed an opposition. Because I have determined that a hearing would not likely advance my understanding of the dispute and because neither party has requested a hearing, this matter is being decided on the papers.[1]

BSEA Hearing Rules and the Massachusetts Executive Office of Administration and Finance Adjudicatory Rules of Practice and Procedure both provide that a Hearing Officer may allow a motion to dismiss if the moving party fails to state a claim upon which relief may be granted.[2]

Similarly, the federal courts have concluded that a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) may be allowed if the court finds "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[3]

Therefore, dismissal is inappropriate unless Parent, as the non-moving party, can prove no set of facts in support of their claims. The Hearing Officer must consider Parents' claims based upon any theory of law and must consider the allegations in the hearing request to be true, as well as all reasonable inferences in the Parents' favor.[4]

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[1] Parents are represented by attorney Ray Wallace. Wayland is represented by attorney Regina Williams Tate.
[2] BSEA Rule 17B; 801 CMR 1.01(7)(g)3.
[3] *Judge v. City of Lowell*, 160 F.3d 67, 72 (1st Cir. 1998) (quoting *Conley v.Gibson*, 355 U.S. 41, 45-46 (1957)).
[4] See *Caleron-Ortiz v. LaBoy-Alvarado*, 300 F.3d 60 (1st Cir. 2002) ("accepting as true all well-pleaded factual averments and indulging all reasonable inferences in the plaintiff's favor" a motion to dismiss will be denied if recovery can be justified under any applicable legal theory). See also *Whitinsville Plaza, Inc. v. Kotseas*, 378 Mass. 85, 89 (1979); *Nader v. Citron*, 372 Mass. 96, 98 (1977).

Facts

For purposes of this Ruling only, I assume that the facts alleged within Parents' hearing request are true, together with reasonable inferences in Parents' favor. I recite below the facts that are relevant to the instant dispute, as well as a description of the agreement at issue in this dispute. (Parents filed a copy of the agreement when they filed their opposition.)

Student is sixteen-years-old and lives with her Parents in Wayland, MA. She has been diagnosed with mild Attention Deficit Disorder, processing speed challenges and anxiety. She began 9th grade at the Wayland High School in September 2011 and almost immediately began to struggle academically. She also experienced being ostracized and bullied by her classmates. All of this exacerbated her school anxiety. In November 2011, Wayland offered (and Parents accepted) a Section 504 plan, following a series of evaluations by Wayland.

In April 2012, Wayland proposed an initial evaluation of Student for purposes of considering special education eligibility. On June 7, 2012, the Team proposed an IEP for the period 6/7/12 to 6/6/13.

Parents were dissatisfied with the proposed IEP and were frustrated over what they believed was Wayland's failure to implement the Section 504 plan. In order to resolve their disagreements with Wayland, Parents sought mediation through the BSEA. Wayland agreed to participate in mediation.

On June 22, 2012, mediation occurred with BSEA Mediator Matthew Flynn. The mediation resulted in a written agreement, signed by the parties on June 22nd, that included Parents' commitment to visit the TEC School in Newton, with Student; and Wayland's commitment to fund Student's placement at the TEC School for three school years if she were accepted.

On June 27, 2012, Wayland sent a referral packet to the TEC School. In mid-July, Parents and Student visited the School.

Soon thereafter, Parents determined that the TEC School would not be an appropriate placement for Student. In a letter to Wayland dated July 26, 2012, Parents explained that the School had a limited art program (Student was particularly interested in art) and that Student would be unable to take a language if she chose an art class. Parents also expressed concern about the lack of after-school programs and lack of social activities on the campus, which were important to Student in light of her feeling socially isolated at Wayland High School.

On August 4, 2012, Student received a letter from the TEC School, advising her that she had been accepted. However, since Parents had decided it was not an appropriate placement for Student, they sought to return to mediation with Wayland to explore other options. Wayland declined to participate further in mediation.

Parents then unilaterally placed Student at Proctor Academy in Andover, New Hampshire, which she attended for the 2012-2013 school year.

Through their hearing request, Parents seek reimbursement of their expenses regarding Student's placement at Proctor Academy, as well as an order requiring Wayland to place Student prospectively at Proctor Academy, and other relief. Wayland has denied any liability.

Discussion

Wayland takes the position that the mediation agreement between the parties precludes Parents from obtaining any of their requested relief. For this reason, Wayland asks that I dismiss Parents' hearing request in its entirety.

Although it remains uncertain whether an IDEA hearing officer has the authority to enforce a mediation agreement, "the cases are uniform in holding that it is error simply to ignore it."[5] The parties do not argue otherwise. I therefore consider the relevance, if any, of the mediation agreement to Parents' rights and Wayland's responsibilities regarding Student's special education and related services.

Wayland takes the position, correctly, that the mediation agreement required Wayland to send a referral packet to the TEC School in Newton and, if Student were accepted there, to fund this placement for three years. Wayland notes, again correctly, that the TEC School accepted Student after Wayland sent the referral packet and after a visit by Parents and Student. Wayland takes the position, which is not disputed by Parents, that Wayland then wrote an IEP for Student's placement at the TEC School for the 2012-2013 school year and was willing to do so for the subsequent two school years.

As discussed above, Parents declined to send their daughter to the TEC School, they unilaterally placed her at a different private school (Proctor Academy), and they now seek from Wayland reimbursement of expenses and prospective placement at Proctor Academy.

Wayland argues that the mediation agreement "does not give Parents the right to terminate the contract and seek funding for a new school if they decided they didn't like TEC or they

[5] *South Kingstown School Committee v. Joanna S*., 2014 WL 197859, *11-12 (D.R.I. 2014). See also, e.g., *School Bd. Of Lee County, Fla. v. M.M. ex rel. M.M.*, 2009 WL 3182971(11th Cir. 2009) (because breach of Settlement Agreement claim relates to FAPE, claim must first be considered in an administrative due process hearing before it can be considered by court); *H.C. v. Colton-Pierrepont Cent. School Dist*., 2009 WL 2144016 (2nd Cir. 2009) ("due process hearing before an IHO [impartial hearing officer] was not the proper vehicle to enforce the settlement agreement" but IHO had responsibility to "consider the settlement agreement to the extent it might have been relevant to the issue before him, *i.e.*, whether H.C.'s 2006-07 IEP provided her with a FAPE"); T.L. ex rel. G.L. v. Palm Springs Unified School Dist., 304 Fed.Appx. 548 (9th Cir. 2008) (exhaustion of administrative due process required where claim is breach of settlement agreement regarding educational services under the IDEA); *J.P. v. Cherokee County Bd. of Educ.*, 218 Fed.Appx. 911 (11th Cir. 2007) (claims regarding alleged breach of contract involving special education issues must be addressed through administrative due process remedies prior to consideration by the court); *Shawsheen Valley Regional Vocational Technical School Dist. School Committee v. Commonwealth of Mass. Bureau of Special Education Appeals*, 367 F.Supp.2d 44, 55-56 (D.Mass. 2005) (court implicitly indicated appropriateness of Massachusetts BSEA hearing officer's consideration of whether settlement agreement had been complied with for purposes of ruling on parent's compensatory claim).

wanted the student to go somewhere else."[6] Thus, Wayland takes the position that the mediation agreement provided that if Student were accepted at the TEC School (which she was), Parents were left with only one option—that is, for Student to attend the TEC School—and Wayland had no responsibilities under state or federal special education laws other than to fund Student's placement there. Wayland further argues that the mediation agreement implicitly resolved all issues *prior* to the date of the mediation agreement, thereby foreclosing any claims Parents may have from the 2011-2012 school year.

Thus, Wayland seeks to have me interpret the mediation agreement as a waiver of Parents' rights under the IDEA and state special education law, once Wayland fulfilled its part of the bargain, which it did. I therefore consider the law relevant to agreements that purport to waive parental rights under state and federal special education law.

When interpreting an agreement that allegedly waives parental rights under the IDEA, the "more searching standards reserved for waivers of civil rights claims, rather than general contract principles", apply.[7] Additional factors must be considered, such as whether the language of the agreement allegedly waiving IDEA rights was "clear and specific".[8] Also, a waiver of a parent's rights under the IDEA or state special education law must be knowing.[9] From these standards, I find that for the mediation agreement to have effectively waived Parents' rights in the instant dispute, the language in the agreement must, at a minimum, have been sufficiently clear and specific so that Parents would have known what they were giving up by entering into the agreement.

I now turn to the mediation agreement in the instant dispute. Other than boilerplate language regarding confidentiality of the terms of the agreement, the mediation agreement addresses only the following three points:

1. Wayland agreed to send a packet to the TEC School in Newton and, if Student were accepted there, Wayland agreed to fund this placement for three school years.

2. Parents agreed to visit the TEC School, with Student, in order to allow the TEC School to meet Student and assess the appropriateness of the program.

3. The parties agreed that if Student were not accepted at the TEC School, they would return to mediation to further discuss an appropriate placement and IEP for Student.

In other words, the parties only agreed to a process by which Wayland would make a referral to the TEC School and, if Student were accepted there, Wayland agreed to fund Student's

[6] Wayland's Motion to Dismiss, p. 5.
[7] *W.B. v. Matula*, 67 F.3d 484, 498 (3rd Cir. 1995).
[8] *Id.* at 497.
[9] See *Id*. ("we will decline to enforce the agreement unless its execution was knowing and voluntary"). See also the federal and state definitions of "consent", requiring that a parent be "fully informed of all information relevant to the activity for which consent is sought." 34 CFR §300.9; 603 CMR28.02(4).

placement for three years. Parents only agreed to participate in the process by taking Student for a visit to the TEC School.

Within the mediation agreement, there is nothing that states (or even suggests) that by offering to fund a placement at the TEC School, Wayland satisfied all of its obligations to Parents and Student under state and federal special education laws. The agreement does not address, either explicitly or implicitly, Wayland's responsibilities under the circumstances that in fact developed—that is, that Parents would decline the placement after visiting the TEC School and finding it to be inappropriate. Thus, the agreement does not state (or even suggest) that by determining the TEC School to be inappropriate and declining to place their daughter there, Parents gave up procedural or substantive protections under state and federal special education laws. In no sense does the agreement purport to be a full resolution of all of Parents' possible special education claims against Wayland.

For these reasons, I find that the mediation agreement does not meet the aforementioned standards regarding waiver of parental rights under state and federal special education laws, and therefore the agreement does not foreclose Parents' claims described within their hearing request.[10]

Accordingly, Wayland's Motion to Dismiss is **DENIED**.

By the Hearing Officer,

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William Crane
Date: February 6, 2014

[10] I also not that Wayland's reading of the agreement would make little practical sense and would impact Parents and Student with harsh consequences that they likely would not have anticipated. When they signed the mediation agreement, Parents and Student had not yet visited the TEC School and apparently they knew little about it. From Parents' perspective, they were essentially agreeing to participate in a referral process that was initiated by Wayland. Under these circumstances, it would be highly unlikely that Parents would agree to give up all of Student's special education rights for three school years based only on the hope that they would find the TEC School to be an appropriate placement.