

**COMMONWEALTH OF MASSACHUSETTS  
BUREAU OF SPECIAL EDUCATION APPEALS**

**Student v. Taunton Public Schools**

**BSEA # 1601127**

**RULING ON TAUNTON PUBLIC SCHOOLS'  
MOTION TO DISMISS**

**RELEVANT PROCEDURAL HISTORY**

Parent filed a request for hearing in the matter of BSEA #1600002 on July 1, 2015. On August 3, 2015, Hearing Officer Amy Reichbach allowed Taunton's Motion for Summary Judgment. She found tht Parent did not have educational decision making authority at the time he filed his hearing request as Student was in the custody of DCF at the time of the filing and that a Special Education Surrogate Parent, (hereafter, SESP) appointed by DESE had the authority to make educational decisions for Student from the time of her appointment on August 6, 2014, until custody was returned to Parent on July 15, 2015.

Parent filed the current request for hearing on August 4, 2015, against the Taunton Public Schools (hereinafter, Taunton), the Department of Children and Families (hereinafter, DCF), and The May Institute, (hereinafter, May). The hearing request described the issue in dispute as follows.

The Taunton Public School Dist [sic] has the disable [sic] child ED [sic] being neglected with a [sic] inappropriate I.E.P. not approved by this Parent who at no time lost any rights to make ED [sic] decisions for my disable [sic] child. The Taunton Public School system, Dept [sic] of children and family, May Schools have interfered and obstructed this agencies [sic] functions to violate the child's I.E.P. on 3 occasions. (See Parent's request for hearing dated August 4, 2015.)

Parent's request for relief stated the following.

Funding for the child's education. A signed agreement from all parties to follow the law and statutes pertaining to special education.

On August 6, 2015, Parent filed a motion for recusal of the initial hearing officer. On August 14, 2015, Taunton filed a Motion to Dismiss and Objection to the Sufficiency of the hearing request. On August 20, 2015, the initial hearing officer issued a ruling on Parent's Recusal motion. She denied the motion for recusal, but submitted the case to the Director of the BSEA for Administrative Reassignment. On August 20, 2015, the matter was reassigned to the undersigned and a Recalculated Notice of Hearing was issued by the BSEA. On August 20, 2015, DCF filed a Motion to Dismiss. On August 28, 2015, the May Institute filed a Motion to Dismiss. On September 4, 2015 both DCF's and May Institute's Motions to Dismiss were allowed.

On September 8, 2015, the Parent did not participate in a scheduled telephone conference call with the hearing officer. The BSEA rescheduled the conference call to allow Parent another opportunity to clarify his hearing request. On September 17, 2015, the Parent again did not participate in the scheduled telephone conference call. On September 21, 2015, Taunton requested a postponement of the September 22 hearing. The BSEA denied the postponement request. On the morning of the hearing, the BSEA Director received a voicemail message from Parent in which he stated he could not travel to the hearing in Boston due to a disability. The Director contacted Parent and informed him he would be permitted to participate in the hearing by telephone.

Taunton filed a Supplemental Motion to Dismiss with Prejudice on September 21, 2015. As grounds for its Motion, Taunton cited Parent's failure or otherwise neglect in participating in the two scheduled conference calls in this matter

On September 22, the morning of the hearing, the hearing officer called Parent from a speaker phone in the hearing room. Parent immediately became argumentative and belligerent and continuously interrupted the hearing officer. (See transcript of hearing.) The hearing officer warned him multiple times that the hearing would be terminated and his case would be dismissed if he did not stop arguing and comply with the directives of the hearing officer. Parent continued to argue and speak inappropriately to the hearing officer. The call was terminated and the hearing officer heard Taunton's argument on its Motion to Dismiss with prejudice. Taunton's argument was digitally recorded and Parent was provided with both a copy of the audio recording and a transcript. The hearing officer wrote Parent a letter enclosing the digital recording of the hearing and informing him that he could submit a written response to Taunton's Motion by October 2, 2015. Parent did not submit a written response.

#### TAUNTON'S POSITION

Taunton argues that Parent's hearing request should be dismissed with prejudice because it raises issues which were previously disposed of by Ruling of Hearing Officer Amy Reichbach allowing Taunton's Motion for Summary Judgment. (See Ruling on Taunton Public School's Motion for Summary Judgment dated August 3, 2015.) Taunton argues that Parent's request for hearing raises three issues: 1) that the existing IEP is not valid as it was never approved by the Parent; 2) that Parent never lost any educational decision making authority for the Student; and 3) that the Respondents violated the IEP on at least 3 separate occasions. Taunton argues that the doctrines of res judicata and collateral estoppel bar Parent from relitigating the issue of the SESP's authority to accept an IEP for Student. Taunton also argues that although it is not aware of the particular date of circumstances of the three alleged violations of Student's IEP, at no time is it alleged that violations occurred after the conclusion of BSEA #1600002, nor is that feasible given that the Hearing Request in this matter was filed two days after the conclusion of BSEA #1600002.

Additionally, Taunton argues that this matter should be dismissed with prejudice because Parent has failed to participate in two scheduled conference calls and has failed to actively participate in the hearing process.

## PARENT'S POSITION

Parent did not submit a response to Taunton's Motion to Dismiss despite being provided multiple opportunities to provide a response through scheduled telephone conference calls, the provision of accommodations for Parent to participate in the hearing, and the provision of an opportunity for him to provide a written response.

## LEGAL STANDARD

Under the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3) and Rule 17B of the BSEA *Hearing Rules for Special Education Appeals*, a BSEA hearing officer may allow a motion to dismiss if the party requesting the appeal fails to state a claim on which relief can be granted. Since this rule is analogous to Rule 12(b)(6) of the Federal and Massachusetts Rules of Civil Procedure, BSEA hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim.<sup>1</sup> Specifically, a motion to dismiss should be granted only if the party filing the appeal can prove no set of facts in support of his or her claim that would entitle him or her to relief that the BSEA has authority to order. That is, a hearing officer may dismiss a case if he or she cannot grant relief under either the federal or state special education statutes or the relevant portions of Section 504 of the Rehabilitation Act, after considering as true all allegations made by the party opposing dismissal and drawing all reasonable inferences in his/her favor. See *Caleron-Ortiz v. LaBoy-Alverado*, 300 F.3d 60 (1<sup>st</sup> Cir. 2002);<sup>2</sup> *Whitinsville Plaza, Inc. v. Kotseas*, 378 Mass. 85, 89 (1979); *Nader v. Citron*, 372 Mass. 96, 98 (1977). *Norfolk County Agricultural School*, 45 IDELR 26 (December 28, 2005). Specifically, what is required to survive a motion to dismiss "are factual 'allegations plausibly suggesting (not merely consistent with)' an entitlement to relief." *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

Taunton additionally points to the doctrines of res judicata and collateral estoppel as grounds for dismissing this case. *Allen v. McCurry*, 449 US 90 at 94 (1980); *Carpenter v. Carpenter*, 73 Mass.App.Ct. 732 at 738 (2009); *In Re: Harwich Public Schools and Marshall*, 14 MSER 23 (2008); *In Re: Sutton Public Schools and Neville*, 13 MSER 352 (2007)

The doctrine of res judicata bars relitigation of issues that were or reasonably could or should have been litigated in prior actions between the same parties and were the subject of a final, conclusive decision. If the issue a party seeks to resolve in one formal adjudicatory process arises out of a "common nucleus of operative facts" considered and decided in a prior action, that issue is barred even if it were not formally presented in the prior action. *Sutton*, citing *Apparel Art Int'l., Inc. v. Amertex Enterprises, Ltd.*, 48 F3d 576 (1<sup>st</sup> Cir. 1995); *Carlette v. Charlette Bros. Foundry, Inc.* 793 N.E. 2d 1268 (Mass.App.Ct. 2003). For the purpose of application of issue preclusion doctrines, consideration and resolution by an administrative adjudicatory agency is equivalent to a court judgment. "[A] final order of an administrative agency in an adjudicatory

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<sup>1</sup> See, for example, *In Re: Inessa R. v. Groton Dunstable School District*, BSEA No. 95-3104 (Byrne, November 1995)

<sup>2</sup> A motion to dismiss will be denied if "accepting as true all well-pleaded factual averments and indulging all reasonable inferences in the plaintiff's favor, if recovery can be justified under any applicable legal theory." *Id.*

proceeding...precludes relitigation of the same issues between the same parties, just as would a final judgment of a court of competent jurisdiction.” *Sutton*, citing *Korbrin v. Bd. Of Registration in Medicine*, 444 Mass. 837, 844 (2005)

An action is barred by res judicata whenever the following three elements exist: 1) a final judgment on the merits in an earlier case; (2) “sufficient identity” between the causes of action asserted in the earlier and later cases; and (3) “sufficient identity” between the parties in the two suits. *Harwich*, citing *Gonzalez-Pina v. Rodriguez*, 407 F.3d 425, 429 (1<sup>st</sup> Cir. 2005).

Under the doctrine of collateral estoppel, once an issue of fact or law necessary to a judgment has been decided, that decision may preclude relitigation of the issue in an appeal on a different cause of action involving a party to the first case. *Allen v. McCurry*, 449 US 90 at 94 (1980)

When a party fails to attend a Hearing, fails to conform to BSEA rules, fails to comply with BSEA Orders, or otherwise indicates an intent not to proceed with a claim, the BSEA may dismiss the Appeal. 801 CMR 1.01(g); 603 CMR 28.08(5)(c); BSEA Rules XVII and X(B).

#### ANALYSIS/CONCLUSIONS

Taunton argues that Parent’s claims are barred by the doctrines of res judicata and collateral estoppel. In order to invoke res judicata, Taunton must show that a final judgment has been made in an earlier case with respect to the same issue(s) Parent seeks to raise in the instant case. Taunton has done so with respect to issues pertaining to the authority of the SESP to accept Student’s IEP during the relevant time period and with respect to the issue of Parent not having educational decision making authority from August 6, 2014 until July 15, 2015. (See Ruling on Taunton Public Schools’ Motion for Summary Judgment, BSEA #1600002, August 3, 2015.) The hearing officer in BSEA #1600002 made specific findings of fact with respect to those very issues, and these issues may not be relitigated. Second, Taunton must show “sufficient identity” between the causes of action asserted in the earlier and later cases. Taunton is able to do so with respect to issues pertaining to SESP and educational decision making authority. However, Taunton is not able to do so with respect to the issue of whether Student’s IEP was “violated” on three occasions as alleged by Parent’s request for hearing. While Taunton correctly argues that Parent does not have standing to assert claims of IEP violations for the time period during which he did not have educational decision making authority, Parent does have standing to raise issues with respect to the IEP from the date on which he regained custody and educational making authority (July 15, 2015) forward. Finally, Taunton must show “sufficient identity” between the parties in the two suits. Taunton has shown that Parent filed both cases against the same parties, Taunton Public Schools, DCF, and May Institute<sup>3</sup>.

Taunton has proven all the necessary elements to bar Parent’s claims pertaining to the appointment of the SESP and the validity of the IEP accepted by the SESP during the time period that she had educational decision making authority with respect to Student. The BSEA

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<sup>3</sup> In the first action, Parent filed against all three parties, but only pursued his claims with respect to Taunton. In the instant case, the hearing officer allowed Motions to Dismiss filed by DCF and May Institute. (See Relevant Procedural History.)

already made a final determination with respect to those claims, and thus, they are dismissed *with prejudice*.

Any claims that Parent either asserted or attempted to assert with respect to the implementation of the IEP (after July 15, 2015, when his educational decision making authority was returned) are not barred by the doctrine of res judicata or collateral estoppel as they were not adjudicated during the prior BSEA case. Specifically, Parent's allegation that the IEP was "violated" on three occasions was not litigated in the prior BSEA proceeding. Additionally, Parent, appearing pro se, filed documents during the time period when he had educational decision making authority, stating that he was rejecting the IEP. The hearing officer scheduled conference calls in an attempt to ascertain whether he was thus. Parent did not participate in the conference calls. It was therefore impossible for the hearing officer to seek clarification of the initial hearing request or determine Parent's intent in filing other documents.

It should be noted that Parent did not comply with the Rules of the BSEA or follow directives of the hearing officer throughout this proceeding. Parent failed to participate in scheduled conference calls and, after several warnings, his participation during the hearing was terminated due to his argumentative and belligerent behavior. Although he filed the request for hearing in this matter, he refused to appropriately participate throughout the entire proceeding. Thus, although Parent's claims with respect to the current IEP (to the extent he raised or sought to raise them) have not been heard, these claims are dismissed *without prejudice* due to Parent's failure to comply with BSEA Orders and Hearing Rules.

Parent may refile claims with respect to issues that have not been litigated when he is prepared to proceed with his case and follow the rules of BSEA procedure.

#### ORDER

Taunton's Motion to Dismiss with Prejudice is ALLOWED with respect to all claims relating to the time period during which DCF had custody of Student and a SESP had educational decision making authority, namely, August 6, 2014 through July 15, 2015.

To the extent that Parent sought to raise claims with respect to the current IEP during the period after July 15, 2015, when he resumed educational decision making authority, those claims are dismissed *without prejudice* because Parent has failed to cooperate with the BSEA in prosecuting those claims. If and when Parent is prepared to comply with BSEA procedure and rules and proceed to a hearing, he may bring claims against Taunton arising on or after July 15, 2015, the date that his educational decision making authority was reinstated .

So Ordered by the Hearing Officer

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Dated: October 27, 2015