

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

**In RE: Student v. Milford Public Schools**

**BSEA # 16-01412**

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

Parents filed a Hearing Request with the Bureau of Special Education Appeals ("BSEA") on August 7, 2015. On August 19, 2015, Milford Public Schools ("Milford" or "District") filed its *Response and Motion to Dismiss* Milford's Hearing Request. ("Motion"). On September 8, 2015, the Parents filed a *Response* to Milford's *Motion*. Both Parties filed supporting memoranda in support of their pleadings. The hearing officer conducted a telephonic motion session on September 15, 2015 at which counsel for both Parties argued their respective positions. For the reasons discussed in this *Ruling*, Milford's *Motion to Dismiss* is **GRANTED**.

**PERTINENT FACTUAL BACKGROUND**

For purposes of this *Ruling* the following assertions are considered to be true and construed in favor of the party opposing dismissal, namely, the Parents.

1. Student is a 17-year-old student with disabilities including traumatic brain injury (TBI) as well as emotional and substance use disorders. The Parties agree that Student is eligible for special education pursuant to applicable federal and state special education statutes. Further, there is no dispute that Milford is the Local Education Authority (LEA) responsible for Student's special education programming.
2. In 2015, Parents requested a hearing with the BSEA to resolve disputes over Student's special education services and placements for the 2014-2015 and 2015-2016 school years. This matter was designated as BSEA No. 1504690 and assigned to Hearing Officer Lindsay Byrne. On May 20, 2015, after a settlement conference with BSEA Director Reece Erlichman, the parties resolved this case by entering into a settlement agreement ("Agreement"). Both Parties were represented by counsel at all stages of the proceeding, including negotiation and execution of the Agreement.
3. At the time the Parties signed the Agreement, Student was attending a treatment facility in Oregon at parental expense, the New Vision Wilderness Program ("New Vision"). The Parties anticipated Student's release from New Vision in or about June 2015.

4. In pertinent part, the Agreement states the following:

3.) 2015-2016 School Year (inclusive of summer 2015):

It is anticipated that the Student will be discharged from New Vision on or about June 2015. The parties agree that the District will make referrals for placement in a day or residential therapeutic program that has been approved by the Massachusetts Department of Elementary and Secondary Education (DESE) of the Parents' choosing as expeditiously as possible upon notice of his imminent discharge...<sup>1</sup>

3(a) [ ]

3(b) [ ]

3(c) District's Evaluation: The District may, at its sole discretion, conduct an evaluation of the Student at any time after the Student's discharge from New Vision and return to Massachusetts...[with]...prior notice [to Parents] of the evaluation...The execution of this Agreement constitutes the Parents' consent to the District's evaluation... [T]he District shall have no obligation to provide the Student with regular or special education services, an IEP, or an IEP Team meeting unless and until he is discharged from New Visions and returns to Massachusetts. In the event that the Student is discharged for any reason and does not return to Massachusetts...the District shall have no obligation to convene a Team meeting, conduct any evaluations, or provide any educational services or a placement unless and until he returns to Massachusetts and is made available to the District to educate and evaluate."

5. During the settlement negotiations, the Parties also informally agreed that Chamberlain International ("Chamberlain"), a DESE-approved Massachusetts residential school, would be appropriate for Student.

6. On May 26, 2015, Parent applied to Chamberlain. On June 5, 2015, Parent visited Chamberlain. Shortly thereafter, Chamberlain rejected Student's application because in a recent departure from its past practice, Chamberlain had stopped accepting students with substance use disorders. Neither Party

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<sup>1</sup> Agreement at p. 2, Para. 3.

had known about or expected Chamberlain's change in admissions policy until the rejection.

7. Student remained at New Vision while the Parties attempted to find an alternative state-approved school to accept Student. The District alleges it explored two potentially appropriate DESE-approved options, Devereaux and Wayside Academy. Parents allege that Milford did not communicate these referrals to them. Parents further allege that no state-approved school would accept Student because of his relatively recent formal diagnosis of TBI.<sup>2</sup>
8. On July 1, 2015 the Parents requested an emergency Team meeting with Milford. Parents allege that the District did not respond. Parents also allege that given Student's current needs, returning him to Massachusetts without a therapeutic program already in place would be inappropriate.
9. In July 2015, New Vision discharged Student and Parents unilaterally enrolled Student in Catalyst Residential Treatment Center in Utah (Catalyst).
10. Parents requested an Addendum to the Settlement Agreement to provide reimbursement for placement at Catalyst. On August 4, 2015, the District refused this request in writing.

### **ISSUE PRESENTED**

At issue is whether Parents have failed to state a claim for which relief may be granted on the basis that BSEA lacks jurisdiction or authority to order the alteration of a fully executed, but not-yet implemented, settlement agreement to create new or additional obligations for the Parties based on a change in circumstances.

### **Position of Milford Public Schools**

Milford asserts the BSEA lacks the jurisdiction or authority to order that the terms of a privately negotiated and legally binding settlement agreement be altered or to otherwise create new or additional obligations. Therefore, the hearing request must be dismissed because the BSEA cannot grant the relief that Parents seek. *Peabody Public Schools*, BSEA #09-6506 (Crane, 2009).

### **Position of Parents**

Parents contend that dismissal is inappropriate unless Student can prove no set of facts in support of his claim which would entitle him to relief. 160 F.3d 67, 72 (1<sup>st</sup> Cir.

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<sup>2</sup> The injury causing Student's TBI occurred in 2012. It appears that the lingering effects of this injury on Student's cognitive and emotional functioning were not fully diagnosed until a New Vision-affiliated psychologist evaluated Student in May and June 2015.

Parents further contend that the hearing officer must consider Student's claims based upon any theory of law, must consider the allegations in the hearing request to be true, and must make all reasonable inferences in Student's favor. Parents assert that the hearing request properly raises claims for which relief can be granted under two contract law theories: 1) impossibility of performance and 2) breach of implied covenant of good faith and fair dealing. Parents' *Response* does not address the BSEA's jurisdiction over contract disputes related to special education matters.

## **FINDINGS AND CONCLUSIONS**

### **Legal Framework**

#### **I. Standard for Ruling on A Motion to Dismiss**

The BSEA has jurisdiction over motions to dismiss a claim if the non-moving party fails to state a claim upon which relief may be granted. *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3), *Hearing Rules for Special Education Appeals*, Rule XVIIIB. These provisions are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

In determining whether to dismiss a claim, a hearing officer must consider as true all facts alleged by the party opposing dismissal. The hearing officer should not dismiss the case if the alleged facts, if proven, would entitle the non-moving party relief that the BSEA has authority to grant. *Caleron-Ortiz v. LaBoy-Alvarado*, 300 F.3d 60 (1<sup>st</sup> Cir. 2002); *Ocasio-Hernandez v. Fortunato-Burset*, 640 F.3d 1 (1<sup>st</sup> Cir. 2011). A motion to dismiss will be denied if "accepting as true well-pleaded factual averments and indulging all reasonable inferences in the plaintiff's favor...recovery can be justified under any applicable legal theory." See *Caleron-Ortiz, supra*. The factual allegations must be sufficient to "raise a right to relief above a speculative level on the assumption that the allegations in the complaint are true (even if doubtful in fact.)" *Bell Atlantic v. Twombly*, 550 U.S. 554, 555 (2007).

The case may be dismissed only if the Hearing Officer cannot grant any relief under federal<sup>3</sup> or state<sup>4</sup> special education statutes, or Section 504 of the Rehabilitation Act.<sup>5</sup> See *Calderon-Ortiz, supra*; *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 (2005).

Conversely, if the opposing party's allegations raise the plausibility of a viable claim that may give rise to some form of relief cognizable any one or more of these statutory provisions, the matter should not be dismissed. See *Ashcorft v. Iqbal*, 129 S. Ct. 1937, 1948 (2009).

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<sup>3</sup> Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et. seq*

<sup>4</sup> M.G.L. 71B

<sup>5</sup> 29 U.S.C. § 479

## II. BSEA's Jurisdiction Over Settlement Agreements

The BSEA has jurisdiction to consider only those claims for which enabling statutes and regulations provide express authority. See *Globe Newspaper Co. v. Beacon Hill Architectural Comm.*, 421 Mass. 570 (1996). “The IDEA and conforming Massachusetts law give the BSEA authority to determine the respective rights and obligations of publicly funded agencies and parents/students in the implementation of federal and state special education statutes.” *In Re: Monson Public Schools*, BSEA #10-5064 (Byrne, 2010).

The question of whether the BSEA has subject matter jurisdiction to interpret privately negotiated settlement agreements concerning special education matters and determine whether either party has breached such an agreement has been debated within courts and the BSEA for some time. There are reasonable arguments for and against asserting administrative due process jurisdiction over private agreements. There is, however, no conclusive guidance on this issue from either the First Circuit or the Massachusetts Supreme Judicial Court. See *S. Kingstown Sch. Comm. v. Joanna S.* 773 F.3d n.3 (1st Cir. 2014) (declining to address whether, or to what extent, administrative hearing officers—as opposed to courts—have jurisdiction over the interpretation of settlement agreements).

Courts in other jurisdictions are divided on this issue, which frequently arises in the context of a party's responsibility to exhaust the administrative process established by the IDEA before seeking judicial relief. For example, the Court of Appeals for the 11<sup>th</sup> Circuit has held that such exhaustion was required in a case where the Court deemed that an alleged breach of contract was related to provision of a free, appropriate public education (“FAPE”). *School Bd. Of Lee County FL. v. M.M. ex rel. M.M.*, 2009 WL 3182971(11th Cir. 2009); *J.P. v. Cherokee County Bd. of Educ.*, 218 Fed. Appx. 911 (11th Cir. 2007).

In contrast, the 2<sup>nd</sup> Circuit Court of Appeals held that a “due process hearing before an IHO [impartial hearing officer] was not the proper vehicle to enforce the settlement agreement,” but the hearing officer must “consider the settlement agreement to the extent it might have been relevant to the issues before him [*i.e.* provision of FAPE to the student].” Similarly, in the matter of *T.L. ex rel. G.L. v. Palm Springs Unified School Dist.*, 304 Fed. Appx. 548 (9th Cir. 2008), the 9<sup>th</sup> Circuit held that exhaustion was mandatory when a breach of contract claim was related to educational services under the IDEA.

### Discussion

The BSEA has the authority to grant relief pursuant to the IDEA and M.G.L. c. 71B as well as § 504 of the Rehabilitation Act. In the instant case, Parents do not assert any claims under these provisions. They do not allege that Student's IEP is inappropriate or has not been implemented, or that Milford has denied Student a FAPE during the period in question. See *In Re Georgetown Public Schools (Ruling on Motion*

*to Dismiss*), BSEA No. 1408733 , 20 MSER 169 (Berman, 2014) Rather, Parents have framed their claims as constituting a breach of contract under the doctrines of impossibility and implied covenant of good faith and fair dealing. While these arguments may well have merit, the BSEA does not retain subject matter jurisdiction over contract law disputes, cannot grant relief under contract law claims, and has no particular expertise in interpreting and applying contract law.

Parents are not without recourse. The dispute about the terms of the settlement agreement could be considered in a court of competent jurisdiction, where the judge's experience and expertise in interpretation of contract language, along with the court's enforcement powers, might give better effect to the parties' original intentions. See *In Re: Israel and the Monson Public Schools*, BSEA #10-5064 (Byrne, 2010). Additionally, Parents retain the right to seek relief in a hearing on the merits at the BSEA based on allegations past denials of FAPE to Student and/or seeking determination of what constitutes FAPE prospectively.

### **ORDER**

The District's Motion to Dismiss for lack of jurisdiction is **GRANTED** without prejudice to the right of Parents to file a future claim based on alleged violations of federal or state special education law and/or § 504 of the Rehabilitation Act and/or seeking prospective relief pursuant to these statutes.

By the Hearing Officer

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Sara Berman<sup>6</sup>

Dated: October 13, 2015

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<sup>6</sup> The Hearing Officer gratefully acknowledges the contributions of BSEA Law Clerk Colleen Shea in researching and drafting this Ruling.