

COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS

Student v. Walpole Public Schools

BSEA # 1701652

Ruling on Walpole's Motion to Dismiss¹

Facts²

The student ("Student") is an eight year old student in third grade who resides with his family in Walpole, Massachusetts. He was the subject of a BSEA hearing entitled In re: Doug, which was decided on July 28, 2016. In that case, Walpole had proposed an IEP requiring a substantially separate program. Walpole did not have an in-district substantially separate program that could meet Student's needs. Therefore, Walpole proposed placing Student at the BICO Collaborative ("BICO"). The hearing officer determined that Walpole's proposed IEP was reasonably calculated to provide Student with a free appropriate public education in the least restrictive environment. He further found that placement in either of the two proposed BICO programs would be appropriate for the implementation of Student's IEP. Parents filed a request for hearing on August 24, 2016. Walpole filed a Motion to Dismiss on September 1, 2016. Parents filed a response to Walpole's Motion to Dismiss on September 27, 2016.

Parent's Position

Parents disagree with findings made in the BSEA decision, issued July 28, 2016, including, Student's diagnosis and his level of behavior issues. They stated that they want their son to be educated at the Fisher Elementary School within the district in which he lives. They do not want their son to be placed at BICO. They alleged that staff within Walpole Public Schools racially discriminated against their son and family

Walpole's Position

Parents' Request for Hearing essentially requests that this hearing officer re-hear the case decided by Hearing Officer Raymond Oliver on July 28, 2016 in BSEA #1608291. It also alleges that Student and his family were racially discriminated against by Walpole Public School personnel. Re-litigating the facts and legal issues which were already reviewed in BSEA #1608291 is barred by the doctrine of *res judicata*. Further, it is well established that the BSEA has only that jurisdiction conferred upon it by law, which jurisdiction does not include ruling upon allegations of racial discrimination. Parents' hearing request therefore must be dismissed, with prejudice, in its entirety.

¹ In making this Ruling, the hearing officer reviewed Parents' Request for Hearing, the Decision issued by Raymond Oliver in BSEA #1608291, Walpole's Motion to Dismiss, dated September 1, 2016, and Parents' response dated September 27, 2016.

² The facts are established for purposes of this Ruling only.

Legal Standard - Motion to Dismiss

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.³ 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 (1st Cir. 2002);⁴ *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).

Analysis

In the case at hand, Parents can prove no set of facts in support of their claims that would entitle them to relief that the BSEA has authority to offer for two distinct reasons. First, with respect to the claims regarding Student's diagnosis, his behaviors, and his school placement, the claims are barred by the doctrine of *res judicata*. As noted by Walpole in its Motion to Dismiss, "Courts and administrative agencies have endorsed a principle that prevents a disgruntled party from re-litigating matters that have already been decided." *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *In Re Sonus Networks, Inc., Shareholder Derivative Litigation*, 499 F.3d 47, 56-57 91st Cir. 2007); *Gonzalez-Pina v. Rodriguez*, 407 F.3d 425, 429 (1st Cir. 2005.) The court held that the "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." *Kobrin v. Board of Registration in Medicine*, 444 Mass. 837, 843-44 (2005)

In this matter, there was a final decision issued in BSEA #1608291 on July 28, 2016. The Parties and disputed educational issues in the previously decided case were the same as in the instant case. The issues raised by Parents regarding Student's diagnosis, educational needs, and required educational program have been or could have been fully adjudicated in BSEA #1608291, and cannot be relitigated in this proceeding. Parents'

³ See, for example, *In Re: Inessa R. v. Groton Dunstable School District*, BSEA No. 95-3104 (Byrne, November 1995)

⁴ 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.*

recourse if they disagree with the decision in BSEA #1608291 is to file an appeal in a court of competent jurisdiction. Parents are not permitted by law to file a new hearing request regarding the same issues that were decided by the BSEA on July 28, 2016.

Attached to all decisions issued by the BSEA is a document that contains information about the effect of the decision and parties' rights with respect to the decision. Said document places parties on notice that BSEA decisions are not subject to further agency review. Additionally, it informs parties that they may file a complaint in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts for review of the BSEA decision. (20 U.S.C. § 1415(i)(2)) There is no relief that the BSEA can grant to the Parents based upon their educational claims which have already been adjudicated by this agency and are not subject to further agency review.

Next, in both their Request for Hearing and Response to Walpole's Motion to Dismiss Parents allege that Walpole personnel have engaged in racial discrimination against their son and family⁵. Walpole correctly states that claims of racial discrimination are beyond the jurisdiction of the BSEA. M.G.L. ch. 71B, § 2A provides in relevant part

There shall be a bureau of special education appeals which shall provide adjudicatory hearings, mediation and other forms of alternative dispute resolution as determined by the bureau of special education appeals for resolution of disputes between and among parents, school districts, private schools and state agencies concerning: (i) any matter relating to the identification, evaluation, education program or educational placement of a child with a disability or the provision of a free and appropriate public education to the child arising under this chapter and regulations promulgated hereunder or under the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq., and its regulations; or (ii) a student's rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, and its regulations.

See also, 603 CMR 28.08(3)(a).

A parent or a school district, except as provided in 603 CMR 28.08(3)(c) and (d), may request mediation and/or a hearing at any time on any matter concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities. A parent of a student with a disability may also request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973, as set forth in 34 CFR §§104.31-104.39.

⁵ Walpole denies said allegations as baseless and insulting to Walpole staff. (See Walpole's Memorandum in Support of its Motion to Dismiss.)

The BSEA's subject matter jurisdiction is limited as noted above. Claims of racial discrimination may not be brought before the BSEA, but only before courts of pertinent jurisdiction or agencies specifically empowered to hear such claims.

As the BSEA neither has the authority to revisit a prior agency decision nor jurisdiction over claims of racial discrimination, the Parents' claims are hereby dismissed *with prejudice*.

ORDER

Walpole's Motion to Dismiss *with prejudice* is ALLOWED.

So Ordered by the Hearing Officer

Catherine M. Putney-Yaceshyn

Dated: September 30, 2016