# COMMONWEALTH OF MASSACHUSETTS

## Division of Administrative Law Appeals

**Bureau of Special Education Appeals**

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In Re: Student

& BSEA #1800903

Wellesley Public Schools

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**RULING ON SCHOOL’S MOTION TO DISMISS**

This matter comes before the Bureau of Special Education Appeals (“BSEA”) on the Motion of the Wellesley Public Schools to Dismiss the Hearing Request filed by the Parents on July 31, 2017.

STANDARD FOR MOTIONS 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, a 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. Specifically, a hearing officer must consider as true all facts alleged by the party opposing dismissal (in this case, Parents) and should not dismiss the case if those facts, if proven, would entitle the non-moving party to relief that the BSEA has authority to grant. *Ashcroft v. Iqbal, 556 U.S. 662 (2009), Ocasio-Hernandez v. Fortunato-Burset, 640 F.3rd 1 (1st Cir. 2011).*

FACTUAL BACKGROUND

For the purposes of this Motion the agreed upon operative facts are few:

1. At all times relevant to this dispute, the Student has been eligible for special education though the Wellesley Public Schools.

2. In April 2016 the Parents sought a due process Hearing at the BSEA.

3. In June 2016 the Parties executed a Settlement Agreement which resolved all potential claims each party might have raised against the other through the execution date. In addition, in exchange for the release of public funds to them, the Parents agreed to assume responsibility for the provision of all substantive special education services to the Student throughout the 2016-2017 and 2017-2018 school years and to waive any procedural rights that, by statute, are attached to IDEA eligibility. The School retained limited ministerial administrative duties such as the issuance of 2016-2017 and 2017-2018 IEPs without a Team meeting and one school-based related service evaluation.

4. In September 2016 the Parents accepted the 2016-2017 and the 2017-2018 IEPs produced by Wellesley for the Student.

5. Both Parties have been represented by attorneys through this process.

6. The Parents allege a breach of the Settlement Agreement and request that the BSEA make factual findings concerning the Settlement Agreement, as well as the circumstances of the alleged breach. The Parents assert that, as a result of the breach, the Student has been denied a free appropriate public education and the Parents have suffered associated financial losses. They request an award of “compensation”, damages and attorney’s fees.

PARENTS’ POSITION

The Parents contend that the BSEA may consider “any matter” concerning a student’s special education services, including the terms of and compliance with a privately negotiated settlement agreement. They assert that even if the BSEA lacks the authority to “enforce” the agreement, it has the expertise to interpret its terms and to gather evidence bearing on its implementation. They further maintain that exhaustion of the BSEA dispute resolution process is necessary before filing a breach of contract action in court.

SCHOOL POSITION

The School argues that the BSEA does not have statutory jurisdiction to entertain disputes about the terms of a privately negotiated settlement agreement. The School asserts that the Parents’ claim is properly characterized as a breach of contract rather than a violation of FAPE as the Parents are seeking financial damages rather than any form of special education service for the Student. Finally the School contends that exhaustion of administrative remedies is not required where the BSEA is not authorized to consider the dispute and cannot order the relief requested.

DISCUSSION

This matter revisits a persistent question facing practitioners and BSEA Hearing Officers: whether the BSEA may entertain and resolve disputes arising out of a privately negotiated settlement agreement of IDEA-related claims? I last discussed this issue at length in 2010. *Monson Public Schools*, 16 MSER 296 (2010). There I found that the BSEA lacks jurisdiction to consider or enforce privately negotiated settlement agreements. Neither the governing statutes nor the relevant jurisprudence has changed since then. Nor has my analysis.

First, as an administrative dispute resolution body the BSEA’s jurisdiction is circumscribed by its authorizing statute(s) and general principles of administrative law. Lacking a general grant of jurisdiction, the BSEA has authority to consider and take action only with respect to those claims expressly delegated to it by its enabling statutes and regulations, and not inconsistent with them. *Globe Newspaper Co. v. Beacon Hill Architectural Co.., 847 F.Supp. 179 (D. Mass 1994); Globe Newspaper Co. v. Beacon Hill Architectural Comm., 421 Mass. 570, 659 N.E. 2nd 710 (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 as they pertain to the implementation of federal and state special education statutes. 20 U.S.C. §1415; M.G.L. c 71B.

The IDEA, in particular, sets out detailed procedures, timelines and evidentiary requirements to be observed by special education hearing officers. See *eg*. 20 U.S.C §1415(f) and (i). Among these directives are instructions to parties who become dissatisfied with the implementation of agreements they have made in resolution meetings or mediation sessions (as well as Decisions reached by Hearing Officers): go to court.

The IDEA clearly states that an agreement reached in a resolution meeting or a mediation that resolves the claims set out in a Parent’s due process hearing request is enforceable only in a state or federal court. 20 U.S.C. §1415 (e) (2) (f) (iii); 20 U.S.C. §1415 (f) (1) (B) (iii) (II); 34 CFR 300.506 (b) (7); 34 CFR 300.519 (a) (2). Congress explicitly declined to authorize review of those agreements by an administrative level hearing officer. Congress has not directly addressed the interpretation and/or enforcement of privately negotiated settlement agreements involving the provision of special education services to IDEA-eligible students. There is no reason to suppose, however, that Congress intended to carve out an exception to its intention that IDEA-related agreements be reviewed in court solely for agreements negotiated outside of the IDEA sanctioned due process system. I remain persuaded that had Congress, or the Massachusetts General Court, intended that the administrative dispute resolution process so carefully laid out in the statute be charged with reviewing and/or enforcing private settlement agreements it would have clearly so stated.

Second, since the *Monson* ruling BSEA Hearing Officers have consistently declined to interpret and/or “enforce” the terms of privately negotiated settlement agreements when asked to do so by appealing parties. *Milford Public Schools*, 21 MSER 219 (Berman 2015); *Worcester Public Schools*, 19 MSER 68 (Putney-Yaceshyn 2013); *Lincoln-Sudbury R.S.D*, 16 MSER 424 (Figueroa 2010). To the extent that settlement agreements have been subject to BSEA scrutiny, it has been limited to determining whether the issues addressed by the agreement are substantially similar to those the requesting party sought to have resolved by the BSEA. Identity of issues deprives the BSEA of jurisdiction. *Peabody Public Schools*, 15 MSER 154 (Crane 2009). In this matter, the parties have not asserted any compelling facts or public interest to justify departing from the BSEA’s position that private settlement agreements operate as contracts reviewable only by a court.

Third, the Student argues that the jurisdictional requirement that parties exhaust special education administrative due process procedures before filing a complaint in court means that any dispute, in any form, involving special education in Massachusetts must pass through the BSEA on its way to court. Certainly the principle of exhaustion applies to disputes under 20 USC §1401 et seq., 29 USC §794, and MGL c. 71B. It applies, however, only when there is an administrative procedure authorized to consider the dispute in the first instance. Where none exists, or when the administrative agency is not authorized to consider a particular type of dispute, the exhaustion requirement is not applicable and the parties may proceed directly to court. *Pihl v. Massachusetts Department of Education*, 9 F.3d 184 (1st Cir. 1993); *Holyoke Public Schools*, 22 MSER 174 (2016).

In *Michelle K. v. Pentucket R.S.D.*, 79 F. Supp.3d 361 (D. Mass 2015) the district court considered the effect of a private settlement agreement on the viability of the Parent’s/Student’s claims at the BSEA. In remanding part of the matter to the BSEA the court observed that the terms of the settlement of agreement at issue were ambiguous and that the Student’s claims before the BSEA were not entirely addressed by the settlement agreement. These factors led the court to conclude that the fact finding function of the BSEA would be useful for the parties and the court. In other words, where a settlement agreement unambiguously disposes of all FAPE claims, and no additional issues implicating the parties’ rights under the IDEA apart from those bearing on compliance with the terms of the settlement agreement were raised in the complaint, administrative exhaustion would not be required. In this matter the terms of the settlement agreement are clear and unambiguous. The Parents’ only objections relate to compliance with those terms. No issues outside of the orbit of the settlement agreement are raised in the Parents’ BSEA Hearing Request. Therefore, the BSEA’s area of administrative expertise is not implicated.

A recent U.S. Supreme Court decision addressing the IDEA’s exhaustion requirement in the context of Section 504 and ADA Title II claims of an IDEA eligible student against a public school provides additional guidance. In *Fry v. Napolean Community Schools*, 137 S. Ct. 743 (2017) the Court held that “exhaustion is not necessary when the gravamen of the plaintiff’s suit is something other than the denial of the IDEA’s core guarantee – what the Act calls a ‘free appropriate public education’.” The Court further instructed:

….[T]hat examination should consider substance, not surface. The use

(or non-use) of particular labels and terms is not what matters. The inquiry,

for example, does not ride on whether a complaint includes (or alternatively

omits) the precise words “FAPE” or “IEP”. *Fry*, supra at 755. The complaint

must, however, seek relief that is available under the IDEA for the denial of

FAPE. *Id* at 752.[[1]](#footnote-1)

In this matter, the “crux” or “gravamen” of the Parents’ complaint as set out in their Hearing Request, is that the June 2016 Settlement Agreement has been breached. Though containing a passing reference to a denial of FAPE claim, the relief sought by the Parents is monetary: reimbursement, damages and attorney’s fees. The complaint does not set out any substantive educational injury to the Student. Nor could it convincingly do so as the Parents undertook that responsibility entirely under the Agreement. As the Parents here seek financial relief that is not available under the IDEA, for claims not rooted in a denial of FAPE, I find that exhaustion of administrative procedures is not required. Their breach of contract claims are more properly considered by a court with the appropriate jurisdiction and expertise.

Finally, the public policy considerations which animate discussions about the limits of administrative jurisdiction in the special education context, remain important. As in *Monson*, *supra*, asserting subject matter jurisdiction in this matter would require the BSEA as the entity charged with neutrally enforcing the provisions of the IDEA and M.G.L. c 71B to either approve the transfer of public funds for private use without any form of public accountability or to strike down the proffered settlement agreement as void as against public policy. Neither option is palatable. The fix, if there is one, is in the hands of the people’s legislature.

CONCLUSION

For the reasons outlined above it is my determination that the BSEA lacks appropriate jurisdiction to consider the claims set out in the Parents’ Hearing Request and to provide the relief sought. I further find that when a dispute arises out of, or involves the terms or implementation of, a privately negotiated settlement agreement exhaustion of the IDEA’s administrative process is not warranted or authorized under the IDEA. Based on these findings, the Parents’ Hearing Request is not properly lodged at the BSEA.

ORDER

The Motion of the Wellesley Public Schools’ Motion to Dismiss the Parents’ Hearing Request is GRANTED for failure to state a claim upon which relief could be granted.

By the Hearing Officer

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Lindsay Byrne

Dated: December 4, 2017

1. Interestingly, the Court observed: “the only relief that an IDEA officer can give-hence the thing a plaintiff must seek in order to trigger §1415 (i)’s exhaustion rule – is relief for the denial of FAPE.” *Fry* at 753, thus providing additional support for respecting the limitations of the BSEA’s administrative jurisdiction. [↑](#footnote-ref-1)