**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Trevor[[1]](#footnote-1) BSEA **#**2105891

**RULING ON TRITON REGIONAL SCHOOL DISTRICT’S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Hearing Officer on the *Motion for Summary Judgment* [hereinafter “*Motion”*] filed by the Triton Regional School District (Triton, or the District)

on March 15, 2021. On February 19, 2021, following a Conference Call during which the parties discussed motion practice and agreed to deadlines, I issued an Order under which any motions for summary judgment were due by close of business on March 19, 2021, and any responses thereto were due by April 9, 2021. Parent declined to file a *Motion for Summary Judgment* of her own, and she did not file a *Response* to the School District’s *Motion*. Neither party has requested a hearing on the *Motion*. Because neither testimony nor oral argument would advance the Hearing Officer’s understanding of the issues involved, this Ruling is being issued without a hearing pursuant to *Bureau of Special Education Appeals Hearing Rule* VII(D).

For the reasons set forth below, the District’s *Motion* is hereby ALLOWED.

1. FACTUAL BACKGROUND AND PROCEDURAL HISTORY[[2]](#footnote-2)

On January 29, 2021, Parent filed a *Hearing Request* against Triton requesting enforcement of a settlement agreement the parties had reached in connection with a previous matter, BSEA #1900851, that covered “the regular 2016-2017, 2017-2018, 2018-2019, and 2019-2020 school years.” Specifically, Parent alleged that Triton had failed to reimburse, at the state rate, transportation costs incurred by parents[[3]](#footnote-3) between January 30, 2019 and May 29, 2020. According to Parent, Clauses 1 and 2B of the settlement agreement require such reimbursement. The Hearing was scheduled for March 3, 2021.

On February 2, 2021, Triton filed its *Response* to Parent’s *Hearing Request*. According to the District, the parties entered into a settlement agreement on January 29, 2019 that provided, in relevant part, “Parents shall be reimbursed for all transportation they provided to [Trevor] to and from Landmark, at the state mileage reimbursement rate, upon receipt of written confirmation of transportation, provided by the parents . . .” To the extent Parent claims that funding for transportation should have been provided beyond the date of the settlement agreement, this interpretation is incorrect, as “the language of the agreement makes clear that that the District’s obligation to reimburse Parents for transportation is for past transportation.” Triton has, in fact, provided this reimbursement, and Parent will be unable to prove otherwise.

Following a Conference Call that took place on February 17, 2021, the parties jointly requested postponement of the Hearing to May 3, 2021 to permit them to attempt to narrow the issues for hearing through motion practice. I allowed this request on February 19, 2021 and set forth the schedule described above. On March 25, 2021, the District requested a further postponement of one month, as Counsel was no longer available on the date selected due to the scheduling of another matter by my sister Hearing Officer. Parent failed to respond and on April 5, 2021 I allowed Triton’s request. The Hearing is scheduled for June 4, 2021.

1. DISCUSSION

In its *Motion for Summary Judgment*, the District advanced two arguments: first, that interpretation and enforcement of a settlement agreement is beyond the scope of the jurisdiction of the Bureau of Special Education Appeals (BSEA), and second, that in the event I do look to the language of the settlement agreement, it does not obligate Triton to reimburse Parents for transportation between January 30, 2019 and May 29, 2020. In support of its *Motion*, the District submitted the settlement agreement itself. In pertinent part, the language of the Settlement Agreement includes the following:

 1. This Agreement covers the regular 2016-2017, 2017-2018, 2018-2019,

and 2019-2020 school years.

2a. Triton agrees to reimburse Parents a total sum of . . . in full settlement of any and all claims for educational services of any kind, including special education tuition owed . . .

2b. The Parents shall be reimbursed for all transportation they provided to [Trevor] to and from Landmark, at the state mileage reimbursement rate, upon receipt of written confirmation of transportation, provided by the parents, and upon receipt of proof of attendance for each day reimbursement is sought, by Landmark.

3. For the 2019-2020 school year, Triton agrees to fund [Trevor]’s tuition at the approved day school rate, by issuing payments in the usual manner directly to Landmark School.

 As to its first argument, the District cites several BSEA cases in which Hearing Officers held that the BSEA lacks the authority to enforce settlement agreements.[[4]](#footnote-4) Triton contends that Parent must seek such enforcement in state or federal court.

In support of its second point, the District argues that Paragraph 2 pertains to the 2016-2017, 2017-2018, and 2018-2019 school years. This paragraph references reimbursement for transportation that parents provided for Trevor to and from Landmark School. Triton emphasizes the use of the past tense in the word “provided,” indicating an intent to cover transportation Parents had provided prior to executing the settlement agreement. Paragraph 3, on the other hand, which pertains to the 2019-2020 school year, omits a transportation provision. As such, the parties did not intend for the settlement agreement to cover transportation beyond the date of its execution.

1. Legal Standard for a Motion for Summary Judgment

Pursuant to 801 CMR 1.01(7)(h), Summary Decision may be granted when there is “no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law.” This rule of administrative practice is modeled after Rule 56 – Summary Judgment – of both the Massachusetts and Federal Rules of Civil Procedure.[[5]](#footnote-5) The party seeking summary judgment begins by demonstrating, with the support of its documents (pleadings, affidavits, and other evidence), that there is no genuine issue of fact relating to the claim or defense. The moving party bears the burden of proof, and all evidence and inferences must be viewed in the light most favorable to the party opposing summary judgment.[[6]](#footnote-6)

 In response to a motion for summary judgment, the opposing party “must set forth specific facts showing that there is a genuine issue for trial.”[[7]](#footnote-7) An issue is genuine if it “may reasonably be resolved in favor of either party.”[[8]](#footnote-8) To survive this motion and proceed to hearing, the adverse party must show that there is “sufficient evidence” in her favor that the fact finder could decide for her.[[9]](#footnote-9) In other words, the evidence presented by the nonmoving party “must have substance in the sense that it [demonstrates] differing versions of the truth which a factfinder must resolve at an ensuing trial.”[[10]](#footnote-10) The non-moving party’s evidence will not suffice if it is comprised merely of “conclusory allegations, improbable inferences, and unsupported speculation.”[[11]](#footnote-11)

 As such, to analyze whether the party moving for summary judgment has met its initial burden such that the burden shifts to the opposing party, I must view all the evidence it has submitted in the light most favorable to the opposing party and determine that there is no genuine issue of material fact related to the claims before me. Only if the moving party is successful in this first step does the burden then shift to the opposing party.

 To determine whether there exists a genuine issue of material fact relating to Parent’s claims regarding the District’s failure to reimburse her for transportation under the settlement agreement, I turn to legal standards regarding the consideration, interpretation, and enforcement of settlement agreements by the BSEA.

1. Relevant Substantive Standards

*i. BSEA Jurisdiction*

The BSEA is a body of limited jurisdiction. As I explained recently in my *Ruling on Acton-Boxborough Regional School District’s Partial Motion to Dismiss and Parent’s Motion to Join the Town of Acton*, [[12]](#footnote-12) a claim is properly before the BSEA if (a) the claim arises under the Massachusetts education statute (M.G.L. C. 71B); the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 *et. seq*., Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and/or the regulations promulgated pursuant to these statutes; or (b) the claim arises under laws different from those enumerated but is “IDEA-based”[[13]](#footnote-13) and thus subject to the IDEA’s exhaustion requirement.[[14]](#footnote-14) The BSEA has explicit jurisdiction over “any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.”[[15]](#footnote-15) A party seeking relief under the above-mentioned federal and state special education laws must “exhaust,” or complete all of the IDEA’s administrative due process procedures, before seeking relief in court.[[16]](#footnote-16) “IDEA-based” claims are those where "the gravamen of the plaintiff’s suit is . . . the denial of the IDEA’s core guarantee—what the Act calls a ‘free appropriate public education.’”[[17]](#footnote-17) These claims must also be exhausted before proceeding to court to ensure that the BSEA is able to develop a factual record and apply its “specialized knowledge” in such cases.[[18]](#footnote-18)

*ii. BSEA Jurisdiction Over Settlement Agreements*

Under the IDEA, “parents may enter into enforceable settlement agreements with [school districts] that provide them with more or less the same entitlements that the IDEA provides.”[[19]](#footnote-19) Generally, such an agreement would be in the nature of a contract enforceable in state court only, but the IDEA specifies that agreements reached through the mediation process or at a resolution meeting are enforceable in any state court of competent jurisdiction or through the federal district courts.[[20]](#footnote-20)

The extent to which the BSEA may exercise jurisdiction over claims involving settlement agreements is unsettled. Hearing Officers are divided on the issue, though most have suggested that we may consider settlement agreements in performing our functions.[[21]](#footnote-21) This position is well-supported by case law.[[22]](#footnote-22) Hearing Officers appear to be united, however, as to our inability to enforce a settlement agreement.[[23]](#footnote-23) This position is also well-supported; courts have uniformly suggested that an administrative agency lacks the authority to enforce a settlement agreement.[[24]](#footnote-24) As the United States District Court for the Eastern District of Pennsylvania explained:

Congress has specifically identified the task that hearing officers should undertake under the IDEA . . . Enforcement of a settlement agreement may determine if parents have waived certain rights under the IDEA, or whether a [school district] has contracted to provide certain benefits above those that the IDEA requires, but it is not related to the fundamental question of whether a child received a free appropriate public education. Enforcing a settlement agreement thus appears to exceed the authority that the IDEA confers upon a hearing officer.[[25]](#footnote-25)

Notwithstanding the issue of enforcement, whether a Hearing Officer may go beyond considering a settlement agreement to interpret it is, similarly, an open question.[[26]](#footnote-26) The United States Court of Appeals for the First Circuit declined to address the issue whether, or to what extent, administrative hearing officers have jurisdiction over the interpretation of settlement agreements.[[27]](#footnote-27) Other courts have, however, suggested that some degree of interpretation is appropriate, at least to determine whether a settlement agreement concerns issues within the jurisdiction of the administrative agency. According to the United States Courts of Appeals for the Ninth and Eleventh Circuits, a party must exhaust the administrative process before seeking judicial relief in a case involving alleged breach of a settlement agreement, at least where that contract claim is related to educational services under the IDEA.[[28]](#footnote-28) In requiring exhaustion, the Eleventh Circuit concluded that Parents’ claim involving breach of a settlement agreement related to the FAPE provided to their child pursuant to the IDEA and, as such, was subject to the IDEA’s exhaustion requirement.[[29]](#footnote-29) Such a determination necessarily requires examining closely the language of a settlement agreement. The United States Court of Appeals for the Second Circuit implied, in a footnote, that a hearing officer’s failure to consider a settlement agreement “to the extent it might have been relevant to the issue before him” regarding whether a particular IEP provided a student with a FAPE, would constitute an error requiring remand.[[30]](#footnote-30)

The interpretation contemplated by these courts is broad: hearing officers are expected to consider and/or interpret a settlement agreement to the extent such consideration or interpretation informs our understanding as to whether the settlement agreement is relevant to the issues properly before us. A separate issue arises where the language of the settlement agreement is itself subject to multiple, potentially conflicting, reasonable interpretations. Faced with this situation, Hearing Officer Sara Berman determined recently that where the language of a settlement agreement is ambiguous and such ambiguity “cannot be resolved by parsing the relevant language[,] there must be an inquiry into circumstances surrounding the negotiation of the [settlement agreement] to determine whether or not there was a ‘meeting of the minds.’ Such inquiry is within the purview of a court with jurisdiction over contract disputes, and not the BSEA.”[[31]](#footnote-31)

1. Application of Legal Standards

In the instant matter, Parent is not asking me to consider the impact of a settlement agreement that relates to educational services under the IDEA. Instead, she seeks enforcement of a provision involving reimbursement for transportation. This necessarily involves interpretation of that provision.

As Parent declined to submit a response to Triton’s *Motion*, I consider the District’s position as to the language of the settlement agreement. According to Triton, paragraph 2 of the agreement, which references transportation reimbursement, pertains only to previous school years, whereas paragraph 3, which explicitly addresses the 2019-2020 school year, excludes any reference to transportation costs. A reasonable reading of this language would be that no transportation would be covered during the 2019-2020 school year. Neither party has advanced that interpretation, as it appears that transportation reimbursement was anticipated by both parties during the 2019-2020 school year, at least through the date of execution of the agreement. This inference arises from Parent’s request for an order for reimbursement beginning January 30, 2019 rather than for the entire school year, which – read together with the District’s interpretation – implies that reimbursement was provided by Triton from the beginning of the 2019-2020 school year through January 29, 2019, the date the settlement agreement was executed. Parent asks that I interpret the settlement agreement to require Triton to cover transportation for the duration of the settlement agreement – that is, through the end of the 2019-2020 school year, and that I subsequently enforce the agreement by requiring the District to reimburse her for transportation she provided for Trevor between January 30, 2019 and May 29, 2020. The District, on the other hand, asserts that the structure of the settlement agreement, in addition to the use of the past tense of the word “provided” in paragraph 2, suggests that reimbursement would be provided for previous years (those it contends are covered by paragraph 2) and the 2019-2020 school year through January 29, 2019, the date of execution of the settlement agreement.

As in Hearing Officer Berman’s case above, I find that this particular language in the settlement agreement is ambiguous, and that the ambiguity “cannot be resolved by parsing the relevant language.[[32]](#footnote-32) As such, “there must be an inquiry into circumstances surrounding the negotiation of the [settlement agreement] to determine whether or not there was a ‘meeting of the minds.’ Such inquiry is within the purview of a court with jurisdiction over contract disputes, and not the BSEA.”[[33]](#footnote-33)

Moreover, even if I were to interpret the language of the settlement agreement as Parent suggests, I have no authority to enforce it.[[34]](#footnote-34)

Finally, this is not an “IDEA-based” case.[[35]](#footnote-35) As in *H.C. v. Colton-Pierrepont Central School District*, where parents sought to enforce provisions of a settlement agreement requiring a school district to supply a table, chair, computer, software, and certain computer accessories within a certain time period:

[t]his enforcement dispute is purely a matter of determining defendant’s obligation sunder the settlement agreement. It does not concern the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. As such, resolution of the dispute will not benefit from the discretion and educational expertise [of] state and local agencies, [or the] full exploration of technical issues related to the administration of the IDEA.[[36]](#footnote-36)

For these reasons, the District has met its initial burden of demonstrating, with the support of its documents (here, the settlement agreement) that there is no genuine issue of material fact relating to Parent’s claims. Even viewing all evidence and inferences in the light most favorable to Parent, it appears that the BSEA does not have jurisdiction to enforce, or even interpret, the parties’ settlement agreement. This is a matter of law for a court of competent jurisdiction.

Analytically, because Triton has met its initial burden, the burden now shifts to Parent to

to set forth specific facts showing that there exists a genuine issue for hearing, which precludes entry of summary judgment against her.[[37]](#footnote-37) Parent has failed to make such a showing.

CONCLUSION

 Upon consideration of the District’s *Motion for Summary Judgment*, memorandum of law, and supporting documents, I find that Triton Regional School District has met its burden to establish that there is no genuine issue of material fact relating to Parent’s claim regarding the enforcement of a settlement agreement entered into by the parties on January 29, 2019. As such, the District is entitled to judgment as a matter of law.

**ORDER**

As summary judgment has been granted in favor of the District, the Hearing scheduled for June 4, 2021 is hereby CANCELLED.

By the Hearing Officer:

 /s/ Amy Reichbach

Date: May 6, 2021

1. “Trevor” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. [↑](#footnote-ref-1)
2. The information in this section is drawn from the parties’ pleadings and is subject to revision in further proceedings. [↑](#footnote-ref-2)
3. Although the settlement agreement references parents, the instant *Hearing Request* was filed by mother only. [↑](#footnote-ref-3)
4. See, e.g., *In Re Rafael and Norton Public Sch.*, BSEA # 1609348 (Byrne 2016); *In Re Student and Milford Public Sch.,* BSEA #1601412 (Berman, 2015); *In Re Student R. and Lincoln-Sudbury Public Sch.* BSEA#112546 (Figueroa, 2010). [↑](#footnote-ref-4)
5. Federal Rule of Civil Procedure 56 authorizes the entry of summary judgment whenever it appears “from the pleadings, depositions, answers to interrogatories, and responses to requests for admission on file, together with the affidavits, if any… that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” [↑](#footnote-ref-5)
6. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 252 (1986). [↑](#footnote-ref-6)
7. *Id.* at 250. [↑](#footnote-ref-7)
8. *Maldanado-Denis v. Castillo-Rodriguez,* 23 F.3d 576, 581 (1st Cir. 1994). [↑](#footnote-ref-8)
9. *Anderson*, 477 U.S. at 249. [↑](#footnote-ref-9)
10. *Mack v. Great Atl. & Pac. Tea Co.,* 871 F.2d 179, 181 (1st Cir. 1989). [↑](#footnote-ref-10)
11. *Medina-Munoz v. R.J. Reynolds Tobacco Co.,* 896 F.2d 5, 8 (1st Cir. 1990). [↑](#footnote-ref-11)
12. BSEA #2101061 (Reichbach 2021). [↑](#footnote-ref-12)
13. *Frazier v. Fairhaven Sch. Comm.,* 276 F.3d 52, 63 (1st Cir. 2002). [↑](#footnote-ref-13)
14. 20 U.S.C. 1415 (*l*); 34 CFR 300.516(e). Some exceptions exist, but they are not relevant here. See *Honig v. Doe*, 484 U.S. 205, 327 (1988); *Frazier*, 276 F.3d at 59. [↑](#footnote-ref-14)
15. 20 U.S.C. § 1415(b)(6)(A); 603 CMR 28.08. [↑](#footnote-ref-15)
16. See 20 U.S.C. § 1415 (*l*); 34 CFR 300.516(e). [↑](#footnote-ref-16)
17. *Fry v. Napoleon Community Schools*, 137 S. Ct. 743, 748 (2017). [↑](#footnote-ref-17)
18. *Frazier*, 276 F.3d at 60; see *Fry*, 137 S. Ct. at 754 (noting that IDEA hearing officers have expertise in addressing FAPE-related claims); *In Re: Georgetown Pub. Sch.*, BSEA #1405352, 20 MSER 200 (Berman 2014) (recognizing that FAPE-related claims asserted under non-IDEA laws may be subject to the IDEA’s exhaustion requirement if the BSEA can “provide some meaningful relief or a superior record on which the court could make its determination”). [↑](#footnote-ref-18)
19. *J.K. v. Council Rock Sch. Dist.*, 833 F. Supp. 2d 436, 447 (E.D. Pa 2011). [↑](#footnote-ref-19)
20. See 20 U.S.C. § 1415(e)(2)(F)(ii) and (iii) (mediation); 20 U.S.C. § 1415(f)(1)(B) (resolution meeting). See also 34 CFR § 300.506(b)(6)(ii) and (7) (mediation); 24 CFR § 300.510(a) and (d) (resolution meeting). BSEA rulings and decisions consistently reference these provisions as applying to settlement conferences as well. The IDEA’s implementing regulations also permit enforcement of settlement agreements by a state educational agency if a state has established other mechanisms that permit parties to seek enforcement of resolution agreements, 34 CFR § 300.510(d)(2), but Massachusetts has not done so. [↑](#footnote-ref-20)
21. See, e.g., *In Re Student and Andover Public Schools*, BSEA #2007733 (Berman 2020) (concluding that in situations where ambiguity exists in the language of a settlement agreement and cannot be parsed, inquiry into whether there was a “meeting of the minds” is within the purview of a court of competent jurisdiction, rather than the BSEA); *Student v. Worcester Public Schools*, BSEA #1302473 (Putney-Yaceshyn 2013) (finding “that the BSEA does not have authority to interpret or enforce the terms of private settlement agreements” and, at the same time, relying on the existence of a settlement agreement and its terms barring the re-opening of the matter to dismiss a case); *In Re Student and Pentucket Regional High School,* BSEA # 128636 (Figueroa 2013) (relying on “clear and unequivocal language of a settlement agreement” to dismiss a claim); *In Re Israel and Monson Public Schools*, BSEA #105064 (Byrne 2010) (declining “to assert subject matter jurisdiction of a dispute that relates solely to the interpretation of a privately negotiated settlement agreement not incorporated into an IEP or BSEA order,” because, among other things, hearing officers lack experience and expertise in interpreting contract language and due to the very real possibility that the BSEA’s obligation to “enforce the public duties set out in the IDEA” would be inconsistent with enforcing, or otherwise endorsing, the terms of a privately negotiated settlement agreement); *In Re Peabody Public Schools*, BSEA # 96506 (Crane 2009) (concluding that it is within the BSEA’s jurisdiction to review a settlement agreement reached through a settlement conference and consider its implications for Parent’s right to proceed to a hearing and determining, on the basis of the settlement agreement’s “clear and unambiguous language,” that the District had fulfilled its obligation). [↑](#footnote-ref-21)
22. See, e.g., *H.C. v. Colton-Pierrepont Cent. Sch. Dist.*, 341 Fed. Appx. 687, 690 n.3 (2nd Cir. 2009) (unpublished) (implying that hearing officer has responsibility to consider a settlement agreement to extent it may have been relevant to FAPE issue before him); *School Bd. of Lee County v. M.M.*, 348 Fed. Appx. 504, 512 (11th Cir. 2009) (unpublished) (requiring exhaustion of claims involving settlement agreement); *T.L. ex rel. G.L. v. Palm Springs Unified Sch. Dist*., 304 Fed. Appx. 548, 549 (9th Cir. 2008) (unpublished) (same); *Justin R. v. Matayoshi*, 2011 WL 24706, at \*13 (unpublished) (hearing officer may consider terms of settlement agreement in relation to other issues, such as determining whether a student has received a free appropriate public education (FAPE)). [↑](#footnote-ref-22)
23. See, e.g., *Andover Public Schools*, *supra*, *Monson Public Schools, supra, Peabody Public Schools, supra*. [↑](#footnote-ref-23)
24. See, e.g., *Council Rock Sch. Dist.*, 833 F. Supp. 2d at 448-49 (enforcement of a settlement agreement exceeds hearing officer’s authority); *Colton-Pierrepont*, 341 Fed. Appx. at 689 (hearing officer has “no authority to enforce [a] settlement agreement – essentially a contract between the parties”); *Justin R.*, 2011 WL 24706, at \*13 (hearing officer does not have jurisdiction to enforce a settlement agreement). [↑](#footnote-ref-24)
25. *Council Rock Sch. Dist.*, 833 F. Supp. 2d at 448-49 (internal quotation marks and citations omitted). [↑](#footnote-ref-25)
26. See, e.g., *Andover Public Schools*, *supra*, *Monson Public Schools, supra, Peabody Public Schools, supra*. [↑](#footnote-ref-26)
27. See *S. Kingstown Sch. Comm. v. Joanna S.*, 773 F.3d, 353 n.3 (1st Cir. 2014) (“We need not address the separate issue whether the Hearing Officer in the course of performing her statutory duties had the authority to consider the Settlement Agreement as a defense, a question that seems to have divided lower courts”). [↑](#footnote-ref-27)
28. See *School Bd. of Lee County*, 348 Fed. Appx. at 512; *Palm Springs Unified Sch. Dist*., 304 Fed. Appx. at 549. See also *D.B.A. ex rel. Snerlling v. Special Sch. Dist. No. 1,* 2010 WL 5300946 at \*4 (D. Minn. 2010) (unpublished) (Hearing officer has no authority to enforce settlement agreements, but may “review and interpret a settlement agreement for the purpose of determining whether jurisdiction exists”). [↑](#footnote-ref-28)
29. See *School Bd. of Lee County*, 348 Fed. Appx. at 512. [↑](#footnote-ref-29)
30. *Colton-Pierrepont Cent. Sch. Dist.*, 341 Fed. Appx. at 690 n.3. [↑](#footnote-ref-30)
31. *Andover Public Schools, supra*. [↑](#footnote-ref-31)
32. *Id.* [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. See *Council Rock Sch. Dist.*, 833 F. Supp. 2d at 448-49; *Colton-Pierrepont*, 341 Fed. Appx. at 689. [↑](#footnote-ref-34)
35. *Frazier*, 276 F.3d at 63. [↑](#footnote-ref-35)
36. See *Colton-Pierrepont*, 341 Fed. Appx. at 690. [↑](#footnote-ref-36)
37. See *Anderson*, 477 U.S. at 250. [↑](#footnote-ref-37)