**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**Student v. Old Colony Regional Vocational BSEA # 2415385**

**Technical School**

***Ruling on Old Colony Regional Vocational Technical School’s Motion for Summary Judgment***

*Relevant Procedural History/ Facts[[1]](#footnote-1)*

Parents filed a Request for Hearing on June 24, 2024. The Hearing was initially scheduled for July 29, 2024. Parents sought “a more comprehensive IEP” inclusive of specific measurable benchmarks for the social/emotional goal. They further requested that the IEP provide for C Grid individual and small group speech and language services, consultation, “BCBA modeling with fading assistance” and extended school year services. In addition, Parents sought compensatory speech language services as well as neuropsychological and transition evaluations. (See Parents’ Hearing Request) The Parties agreed to postpone the Hearing until October 8 and 9, 2024 and thereafter requested an additional postponement until December 2 and 9, 2024. The Parties participated in a Settlement Conference with Reece Erlichman on November 20, 2024and drafted a settlement agreement which included the following terms, among others: Old Colony would fund a transition assessment; Old Colony would provide executive functioning coaching. (See Exhibit 1.) On November 26, 2024, Old Colony filed an assented to Motion to postpone the Hearing because the Parties were circulating a settlement agreement and had scheduled a facilitated team meeting on December 10, 2024. The Hearing was postponed until January 13 and January 17, 2025 and exhibits were due by January 6, 2025. Parents signed Old Colony’s proposed IEP on December 26, 2024. (Exhibit 2) Neither party submitted its exhibits on January 6, 2025. On January 8, 2025, the undersigned sent an email to the Parties inquiring as to the status of the matter and informing the Parties that the exhibits had not been submitted. Parents, the moving party, did not respond. Neither party appeared for the January 13, 2025 Hearing. The Hearing Officer issued an Order to Show Cause on January 15, 2025. The moving party did not respond. As of January 10, 2025, the date that the Motion for Summary Judgment was filed, the Settlement Agreement had not been signed.

*Old Colony’s Position*

Old Colony developed a settlement agreement and IEP to provide Student with the services sought through the Parents’ Hearing Request. (Exhibit 1) This agreement was never signed by the Parents. On December 10, 2024, a facilitated team meeting was held and the settlement provisions were added to the IEP in good faith. At this meeting, Parents made assurances that they intended to sign the Settlement Agreement. On December 26, 2024, Parents accepted this IEP. Attempts to inquire about the status of the agreement were not answered and it is unclear why Parents did not sign this agreement developed with their full input. At this time there is no genuine issue of material fact and no basis to claim there is a continued dispute.

*Parents’ Position*

Parents did not file a response to Old Colony’s Motion for Summary Judgment.

*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.”[[2]](#footnote-2) BSEA hearing officers are also guided by the Federal and Massachusetts Rules of Civil Procedure, Rule 56, which provides that summary judgment may be granted only if the “pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law.”[[3]](#footnote-3)

The party seeking summary judgment must first demonstrate, 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.[[4]](#footnote-4) 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.”[[5]](#footnote-5) An issue is genuine if it “may reasonably be resolved in favor of either party.”[[6]](#footnote-6) 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.[[7]](#footnote-7) In other words, the evidence presented by the non-moving party “must have substance in the sense that it [demonstrates] differing versions of the truth which a factfinder must resolve at an ensuing trial.”[[8]](#footnote-8) The non-moving party’s evidence will not suffice if it is comprised merely of “conclusory allegations, improbable inferences, and unsupported speculation.”[[9]](#footnote-9)

*Analysis*

Old Colony seeks summary judgment arguing that there are no genuine issues of material fact and that the Parties have settled Parents’ claims in full. However, the evidence shows that there is an unsigned settlement agreement and a signed IEP which do not address all of the claims made in Parents’ Request for Hearing. (See Exhibit 1, Exhibit 2, and Parents’ Hearing Request.) There is no affidavit stating that the Parties reached an agreement. It is impossible to ascertain Parents’ position in this matter, as their attorney has failed to respond to all communications from the BSEA, has not appeared for the scheduled Hearing, has not responded to Old Colony’s Motion for Summary Judgment, and has not responded to the BSEA’s Order to Show Cause. Based upon the submissions, I am unable to make a determination that there are no genuine issues of material fact and that Old Colony is entitled to judgment as a matter of law. However, based upon the failure to respond to the Order to Show Cause, the matter will be dismissed *with prejudice* in a subsequent Order.

**ORDER**

Old Colony’s Motion for Summary Judgment is DENIED based upon the foregoing.



Dated: January 29, 2025

1. The facts are established for purposes of this Ruling only. [↑](#footnote-ref-1)
2. 801 CMR 1.01(7)(h). [↑](#footnote-ref-2)
3. Id. [↑](#footnote-ref-3)
4. Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 252 (1986); see also In Re: Westwood Pub. Schl., BSEA # 10-1162 (Figueroa, 2010); In Re: Mike v. Boston Pub. Sch., BSEA # 10-2417 (Oliver, 2010); Zelda v. Bridgewater-Raynham Pub. Sch. and Bristol Cty Agricultural Sch., BSEA # 06-0256 (Byrne, 2006). [↑](#footnote-ref-4)
5. Anderson, 477 U.S. at 250. [↑](#footnote-ref-5)
6. Maldanado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994). [↑](#footnote-ref-6)
7. Anderson, 477 U.S. at 249. [↑](#footnote-ref-7)
8. Mack v. Great Atl. & Pac. Tea Co., 871 F.2d 179, 181 (1st Cir. 1989). [↑](#footnote-ref-8)
9. Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990). [↑](#footnote-ref-9)