**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In Re: Student v. Newburyport Public Schools BSEA # 2508136

**RULING ON NEWBURYPORT PUBLIC SCHOOLS’ MOTION FOR SUMMARY JUDGMENT**

**AND**

**NEWBURYPORT PUBLIC SCHOOLS’ MOTION TO QUASH**

This matter comes before the Hearing Officer on the *Motion For Summary Judgment* (*SJ Motion*), filed by Newburyport Public Schools (Newburyport, or the District) on February 18, 2025, and on Newburyport’s *Motion to Quash Subpoenas and Objection to Witness Testimony on District’s Motion for Summary Judgment* (*Motion to Quash*), filed on April 28, 2025.

On February 7, 2025, Parents filed a *Hearing Request* against Newburyport, alleging that Student has a Specific Learning Disability (SLD) in Reading, a Speech and Language impairment, and Attention Deficit Hyperactivity Disorder (ADHD); and that Newburyport must implement services recommended by Parents’ experts within an Individualized Education Program (IEP) in order to provide Student with a free appropriate public education (FAPE). As relief, Parents requested that the Bureau of Special Education Appeals (BSEA) order the District to immediately provide the reading services recommended by Massachusetts General Hospital (MGH) in a report dated November 19, 2024. With their *Hearing Request*, Parents submitted Newburyport’s N2 Form, dated September 26, 2023, documenting a finding of no eligibility; a Speech-Language and Swallowing Department Initial Evaluation of Student conducted by Speech Language Pathologist Melissa Caron Ghiringhelli on November 12, 2024; notes from meetings between Parents and MGH, entitled Evaluation Follow Up (dated November 19, 2024) and Evaluation Follow-up and Prep for Team Meeting (dated December 3, 2024); affidavits signed by each Parent stating their positions regarding Student’s need for special education; a report of a neuropsychological assessment performed by Dr. Katrina Boyer, PhD of Boston Children’s Hospital in April and May 2023; an Initial Treatment Note from a private speech therapist dated November 30, 2021; a letter from a private tutor working with Student using the Wilson Reading System, dated August 19, 2024; charts labeled National Oral Reading Fluency Norms; and some of Student’s Health Records. Parents requested that the hearing be assigned accelerated status.

Accelerated status was denied, and the Hearing was scheduled for March 14, 2025.

On February 18, 2025, Newburyport filed the instant *SJ Motion* and a Memorandum of Law in support thereof, accompanied by documents labeled S-A through S-F. According to the District, Student is a 15-year-old tenth grader eligible for a Section 504 Plan. Through several hearing requests filed over the past year and a half, Parents have disputed the District’s September 2023 finding that Student is ineligible for special education services. Specifically, on or about October 3, 2023, Parents filed a *Hearing Request* disputing Newburyport’s finding that Student was ineligible for special education. Following a BSEA mediation on or about October 24, 2023, wherein the parties reached an agreement, Parents withdrew that *Hearing Request*. On or about April 23, 2024, Parents filed a second *Hearing Request*, again disputing the District’s finding that Student was ineligible for special education. On or about October 4, 2024, Parents and Newburyport entered into a legally binding Settlement Agreement to resolve concerns raised by Parents in their *Hearing Request*, and Parents then withdrew their second *Hearing Request*. According to the District, the Settlement Agreement, into which Parents entered knowingly and voluntarily, sets forth Newburyport’s sole obligation for providing Student with educational services through the end of the 2026-2027 school year. Although the District agreed to meet with Parents informally in December 2024 to discuss Parents’ concerns regarding Student’s progress in school and, on or about January 10, 2025, proposed mediation to discuss these concerns, these actions were both undertaken voluntarily, in the spirit of collaboration, and were not required under the terms of the Settlement Agreement. On or about February 7, 2025, Parents filed a third *Hearing Request*, the present complaint, disputing Newburyport’s finding that Student was ineligible for special education. Newburyport contends that all issues raised in this *Hearing Request* have been fully resolved via the fully executed and legally binding Settlement Agreement. Because the *Hearing Request* is precluded, summary judgment is appropriate.

On February 25, 2025, Parents filed an *Opposition to Motion for Summary Judgment* (*Opposition to SJ Motion*) accompanied by documents labeled P-A through P-I.[[1]](#footnote-1) On February 26, 2025, Parents filed a second document entitled *Supplemental Information to the Parents [sic] February 25, 2025 Opposition Filing*, consisting of legal citation and argument in support of their position.They contend that Newburyport has, on numerous occasions, documented that the language-based instruction services provided in the Settlement Agreement, Part 1, are “no longer valid;” that such services have been “found to be” ineffective and inappropriate given Student’s needs; and that, therefore, this portion of the Settlement Agreement is inappropriate, and a change is necessary. According to Parents, Ms. Ghiringhelli, a MGH Speech and Language Pathologist, has defined and described the services Student needs to make progress, but Newburyport refuses to meet, discuss, and implement Parents’ proposed changes to the Settlement Agreement that would provide for the recommended services. Parents assert that although the BSEA does not have the authority to interpret or enforce settlement agreements, their *Hearing Request* is not barred by the October 2024 Settlement Agreement between the parties, as it “only asks for a determination whether the child does indeed have a specific learning disability that requires specific specialized services.” Parents argue that nothing in the Settlement Agreement precludes their request that the District determine that Student has a disability in accordance with the Individuals with Disabilities Education Act (IDEA). Moreover, Parents assert, a “settlement agreement that is no longer appropriate nor effective to the purpose of the agreement results in either an amendment, a change, or a new contract of appropriate wording, with appropriate and effective services, intent, goals and monitoring.” Parents’ position is that they have submitted, through their *Hearing Request* and in good faith, “a proposed modification to amend Part 1 [of the Settlement Agreement] in the best interests of the child,” and that the District must either accept their proposed change, resulting in withdrawal of the BSEA filing, or reject their proposal, thus requiring resolution through the District Court.

On February 25, 2025, Parents requested a one-month postponement to permit the parties to work together informally toward resolution of the issues underlying the *Hearing Request* and to enable Parents to obtain further medical and specialist documentation regarding Student’s needs. Following a Conference Call the previous day, on February 27, 2025, the parties jointly requested an additional postponement of three months to permit them to engage in mediation and otherwise work together toward resolution. In their request, the parties noted that the resolution session had been waived, and the District requested oral arguments on its *SJ Motion*. The parties’ request was allowed for good cause, and the Hearing was scheduled for June 12 and 13, 2025. Oral arguments on the *SJ Motion* were scheduled for May 1, 2025.

On or about April 21, 2025, Parents requested that the BSEA issue a subpoena for Ms. Ghiringhelli to attend the oral arguments on May 1, 2025.[[2]](#footnote-2) On April 22, 2025, the District filed a status report, explaining that the parties had not resolved the case informally and objecting to Parents’ request for third party testimony at the *SJ Motion* session. Parents then sent an email at approximately 12:20 AM on April 24, 2025, addressed to Counsel for the District. Specifically, they wrote:

“Ms. [], the parents are formally requesting the following three Newburyport School District employees be required to attend the upcoming hearing as witnesses to be questioned by the parents in defense against the School Districts Motion for Summary Judgment;  Mr. [] (Director of Student Services),  Mr. [] (HS Principal), and Ms. [] (Director of Student Counseling/ 504 Administrator, Newburyport School District, Low St, Newburyport,  MA).  Please provide an answer of there (*sic*) availability for questioning at this upcoming hearing by the end of business Thursday April 24th.”

Later that day, Parents sent a second email requesting that the BSEA send subpoenas to the three individuals listed above, in addition to a named Newburyport reading teacher. These subpoenas issued on April 24, 2025. On April 28, 2025, the District filed the instant *Motion to Quash*, asserting that because the proceeding scheduled for May 1, 2025 would consist of oral arguments as to whether summary judgment should be allowed as a matter of law, and would not be an evidentiary hearing on Parents’ claims, witness testimony regarding matters outside the “four corners” of the fully executed Settlement Agreement would be irrelevant and render the motion session inefficient. Parents responded informally, arguing that they have the “right to provide evidence regarding the language, meetings, and understandings documented between the parties leading up to, and during, the course of the Settlement Agreement,” and that Student’s needs “factor into the appropriateness of” the Settlement Agreement. On April 30, 2025, Ms. Ghiringelli sent an email to the Hearing Officer and the parties, explaining that she would not appear for the motion session “given that the purpose of the meeting is to discuss the settlement agreement.” None of the District staff members for whom Parents had requested subpoenas appeared at the motion session. With the Hearing Officer’s permission, on May 5, 2025,[[3]](#footnote-3) Parents filed their *Opposition to the Newburyport Public Schools’ Motion to Quash Subpoenas and Opposition to the Objection to Witness Testimony on District’s Motion for Summary Judgment* (*Opposition to Motion to Quash*), accompanied by documents labeled P-J through P-S. Parents assert that the Newburyport personnel for whom they requested subpoenas had participated in correspondence, meetings, or discussions regarding Student and could testify regarding a material change in circumstances altering his profile, as well as to modifications the District had proposed to the Settlement Agreement. The remainder of Parents’ arguments regarding the *Motion to Quash*, as well as the Exhibits, pertain to emails between Parents and Newburyport staff between January 6 and April 14, 2025 regarding a possible amendment or addendum to the Settlement Agreement.

For the reasons set forth below, Newburyport’s *Motion to Quash* and *Motion for Summary Judgment* are both ALLOWED.

**FACTUAL BACKGROUND**

The following facts are derived from the pleadings and exhibits submitted by the parties and are taken as true for the purposes of this *Ruling* only. Where a factual dispute exists, I construe it in favor of Parents, as the party opposing summary judgment.[[4]](#footnote-4)

1. Student is a 15-year-old tenth grader attending Newburyport Public Schools. He receives accommodations, pursuant to a Section 504 plan, for a Neurological Impairment (Epilepsy), a Health Impairment, and Executive Functioning deficits. (S-A)
2. An initial evaluation of Student was conducted by Newburyport during the 2022-2023 school year. The Initial Eligibility Meeting was delayed until September 20, 2023, pursuant to Parents’ request to permit simultaneous consideration of an outside Report of Neuropsychological Assessment being conducted by Boston Children’s Hospital.[[5]](#footnote-5) Newburyport found Student ineligible for special education, as District personnel believed Student was making effective progress in the classroom and was not demonstrating the need for additional services or supports. Parents rejected the finding of no eligibility. (S-B)
3. In or about May 2024, Parents requested that MGH schedule a speech and language evaluation of Student. Scheduling the evaluation took nearly six months. (*Opposition to Motion to Quash*)
4. On or about October 4, 2024, the District and Parents entered into a legally binding Settlement Agreement to resolve concerns raised by Parents in a then-pending *Hearing Request* (Settlement Agreement). (S-E) Parents subsequently withdrew that *Hearing* *Request*. (S-F)
5. Part 1 of the Settlement Agreement provides for 1:1 language-based instruction focusing on reading fluency, comprehension, and written expression with a certified Wilson or Orton-Gillingham instructor for two hours per week during the regular school year, for the remainder of the regular 2024-2025 school year, as well as the 2025-2026 and 2026-2027 regular school years. (S-E)
6. Pursuant to Paragraph 1(g) of the Settlement Agreement, the parties agreed that no IEPs or formal progress reports would be developed or issued for Student during the 2024-2025, 2025-2026, and 2026-2027 school years. (S-E)
7. Pursuant to Paragraph 4 of the Settlement Agreement, “other than the instruction and services specifically set forth in the Agreement, the District shall not be obligated to provide or fund additional ‘special’ or ‘related’ services, convene any IEP Teams, conduct any evaluations through the 2026-2027 school year, or provide any summer services (unless the District offers regular education summer school or other summer services to [Student]) except and unless there is a material change in circumstances altering [Student]’s educational profile and needs.”[[6]](#footnote-6) (S-E)
8. On or about November 20, 2024, Parents received a report, dated November 19, 2024, in connection with Ms. Ghiringhelli’s speech and language evaluation of Student that had been completed on November 12, 2024. The report noted that Student “presents with mild-moderate deficits in written language, likely resulting from his slow processing speed.” Ms. Ghiringhelli recommended reading remediation services 3 x 45-60 minutes/week, using a systematic, structured reading program such as Orton-Gillingham, Project Read, Read Naturally, or the Wilson Reading Program to address decoding automaticity, as well as programs to address reading fluency and comprehension. (*Hearing Request*; *Hearing Request* attachments)
9. On or about December 18, 2024, the District and Parents met informally pursuant to Parents’ request to discuss the recent MGH report and their concerns about Student’s progress in school. (*SJ Motion; Opposition to SJ Motion*)
10. On or about January 6, 2025, a Newburyport reading teacher met with Ms. Ghiringhelli. Newburyport’s Director Student Support Services attended and took notes. Ms. Ghiringhelli and the reading teacher discussed Ms. Ghiringhelli’s recommendations for instruction, which differed in frequency from those outlined in the Settlement Agreement.[[7]](#footnote-7) (P-A)
11. On or about February 7, 2025, Parents filed the pending *Hearing Request* before the BSEA. (*Hearing Request*)
12. Between January 6 and April 14, 2025, multiple emails were exchanged between Newburyport staff and Parents regarding changes Parents requested to Student’s services. The District consistently referenced these potential changes as requiring an amendment to the Settlement Agreement, noting that unless both parties agreed to amend the Settlement Agreement, Newburyport would adhere to the terms laid out in the Settlement Agreement when it was signed in October 2024. (P-J, P-K, P-L, P-R) Parents, on the other hand, maintained that the changes to Student’s services are required under the current Settlement Agreement because a “material change in circumstances to [Student]’s academic profile” has occurred. (*Opposition to SJ Motion*; *Opposition to Motion to Quash;* P-S)
13. On April 24, 2025, Parents requested that the BSEA issue subpoenas directing four Newburyport staff members to testify at the motion session scheduled for May 1, 2025. The BSEA issued the requested subpoenas.

**DISCUSSION**

I begin by discussing the relevant legal standards for each of the District’s *Motions*, then apply them to the facts outlined above.

1. Legal Standards
2. *Subpoenas and Motions to Quash*

Pursuant to Rule VII(B) of the BSEA *Hearing Rules for Special Education Appeals*

(BSEA *Hearing Rules*), “[u]pon the request of a party, the BSEA shall issue a subpoena to require a person to appear and testify.” A request for a subpoena must be received by the Hearing Officer, and the opposing party, at least 10 calendar days prior to a hearing.[[8]](#footnote-8) An individual who receives a subpoena may request that a Hearing Officer vacate or modify the subpoena, which the Hearing Officer may do “upon a finding that the testimony or documents sought are not relevant to any matter in question.”[[9]](#footnote-9) The Standard Adjudicatory Rules of Practice and Procedure provide that a Hearing Officer may issue, vacate, or modify a subpoena in accordance with the provisions of M.G.L. c. 30A, § 12.[[10]](#footnote-10) This provision of the Massachusetts General Laws allows a Hearing Officer to vacate or modify a subpoena “upon a finding that the testimony . . . does not relate with reasonable directness to any matter in question . . . or has not been issued a reasonable period in advance of the time when the evidence is requested.”[[11]](#footnote-11)

1. *Summary Judgment*

To determine whether summary judgment may be granted in this matter, I apply the summary judgment standard to the relevant procedural and substantive law – in this case, the law regarding the role of the BSEA where parties have entered into a private settlement agreement.

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.”[[12]](#footnote-12) In determining whether to grant summary judgment, BSEA hearing officers are guided by Rule 56 of the Federal and Massachusetts Rules of Civil Procedure, 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.”[[13]](#footnote-13) “A genuine dispute as to a material fact exists if a fact that ‘carries with it the potential to affect the outcome of the suit’ is disputed such that ‘a reasonable [fact-finder] could resolve the point in the favor of the non-moving party.’”[[14]](#footnote-14) Whether a fact is material depends on the applicable substantive law.[[15]](#footnote-15) “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”[[16]](#footnote-16)

The moving party bears the burden of proof on a motion for summary judgment, and all evidence and inferences must be viewed in the light most favorable to the party opposing the motion.[[17]](#footnote-17) This means that the fact-finder must assess evidence in a way that gives the benefit of the doubt to the non-moving party.

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.”[[18]](#footnote-18) This means that the adverse party must show that a finder of fact (in BSEA cases, a hearing officer) must hear the case because the facts in dispute are genuine – in other words, they may “reasonably be resolved in favor of either party.”[[19]](#footnote-19) This requires “sufficient evidence” in favor of the party opposing summary judgment.[[20]](#footnote-20) Moreover, if the evidence the non-moving party brings forth in its efforts to create a genuine dispute of material fact is comprised of “conclusory allegations, improbable inferences, and unsupported speculation,”[[21]](#footnote-21) or if it is “merely colorable, or is not significantly probative, summary judgment may be granted.”[[22]](#footnote-22)

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 of 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 moving party’s claims. Only if the moving party is successful in this first step does the burden then shift to the opposing party to demonstrate, by use of specific facts, that there is actually a genuine dispute of material fact precluding summary judgment, because a fact-finder might reasonably resolve the issue in its favor.

1. *Settlement Agreements, BSEA Jurisdiction, and “Changed Circumstances”*

The BSEA is an agency of limited jurisdiction. Under federal and state law, parties may file timely complaints before the BSEA “with respect to any matter relating to the identification, evaluation or educational placement of [a] child, or the provision of a free appropriate public education to such child.”[[23]](#footnote-23) The BSEA does not, however, have the authority to hear every claim involving a student with disabilities.[[24]](#footnote-24) Many hearing officers have addressed the limitations of BSEA jurisdiction in cases involving disputes between parties that have previously entered into a binding settlement agreement.[[25]](#footnote-25)

Consistent with the agency’s lack of subject matter over, and expertise concerning, contract law disputes, the BSEA has “historically declined to take jurisdiction over issues of interpretation or enforcement of settlement agreement terms.”[[26]](#footnote-26) Parties seeking enforcement of a settlement agreement, or interpretation of any ambiguous language it may contain, may seek such relief in an appropriate state or federal district court.[[27]](#footnote-27) The BSEA’s practice, instead, “has been to consider the existence and scope of a settlement agreement when adjudicating cases. Hearing officers do not ‘undo’ settlement agreements, or proceed to an evidentiary hearing on a matter that has been addressed and resolved via a settlement agreement.”[[28]](#footnote-28) To allow otherwise, essentially permitting a party to avoid its obligations under the agreement and seek a decision on the merits by a hearing officer, “would undermine the integrity and efficacy of the settlement process.”[[29]](#footnote-29)

Courts have recognized that settlement agreements generally “preclude a parent from bringing future IDEA claims – unless .. . . those claims were based on changed circumstances” that arose after the parties entered into the settlement agreement.[[30]](#footnote-30) The United States Court of Appeals for the First Circuit explained that this standard “reflects both the role settlements may play in resolving IDEA disputes and the legitimate concern with allowing IDEA settlements to bargain away – potentially for all time and without regard to the change in conditions that may arise in the course of a child’s development – the statutory right to a free appropriate public education.”[[31]](#footnote-31)

Applying this standard in *South Kingstown School Committee v. Joanna S.*, a case where the parties agreed that the District would perform four specific evaluations and the parent released her rights to additional evaluations she may have had, the Court found that the parent’s request for additional evaluations did not arise “from a change in the conditions that prevailed” at the time she signed the Settlement Agreement.[[32]](#footnote-32) Though the parent argued additional information regarding the student was necessary because of his “past and present behavior presentations,” she did not identify any changes in the student’s behavior presentations that occurred after the settlement, and her argument that there was a need to identify whether her son had dyslexia after she entered into the settlement agreement was not persuasive, as the parent was “already concerned about dyslexia in April of 2012 when she signed the Settlement Agreement.”[[33]](#footnote-33) As such, the record did not “reveal any sufficient change in circumstances” to “overcome the bar posed by the Settlement Agreement.”[[34]](#footnote-34)

Similarly, the United States Court of Appeals for the Third Circuit concluded that where the parties had entered into a settlement agreement providing that a school district would fund particular services for a student to attend a private program, and the private program later “decided that additional help was needed to deal with [Student]’s *unchanged* condition,” because the student’s disability had not changed, his “personal circumstances had not changed since settlement.”[[35]](#footnote-35) The settlement agreement, therefore, was binding on the parties.[[36]](#footnote-36) To hold otherwise, the Court continued, would “allow [parties] to void settlement agreements when they become unpalatable, [and thereby] would work a significant deterrence contrary to the federal policy of encouraging settlement agreements.”[[37]](#footnote-37)

1. Application of Legal Standards

I apply these standards, incorporating by reference the findings above to avoid needless repetition.

1. *Parents Failed to Request Subpoenas in a Timely Manner; Witness Testimony Not Necessary or Appropriate*

Massachusetts law allows a Hearing Officer to vacate (or quash) a subpoena upon a finding that the testimony “does not relate with reasonable directness to any matter in question . . . or has not been issued a reasonable period in advance of the time when the evidence is requested.”[[38]](#footnote-38) In this case, Parents requested subpoenas on April 24, 2025, which the BSEA issued the same day. Parents’ request was made fewer than 10 calendar days in advance of the motion session and, therefore, failed to comply with BSEA *Hearing Rule* VII(B). For this reason alone, Parents’ subpoenas to Newburyport personnel may be quashed.[[39]](#footnote-39)

Even if I were to find that the late request for subpoenas was reasonable (despite the fact that the motion session had been scheduled several months earlier), the motion session was limited to arguments regarding the District’s *SJ Motion*, the outcome of which turns on whether the language of the Settlement Agreement bars the instant *Hearing Request*. As explained above, in deciding whether to grant a motion for summary judgment, a hearing officer examines the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits submitted by both parties.[[40]](#footnote-40) Taken together, if these documents show that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate.[[41]](#footnote-41) Should the hearing officer conclude that live testimony is required in order to resolve material questions of fact or law, summary judgment would be precluded.[[42]](#footnote-42) Moreover, in this case witness testimony at the motion session would have been neither necessary or appropriate, as it “does not relate with reasonable directness to any matter in question” because, as explained below, the language of the Settlement Agreement is unambiguous.

1. *Newburyport Has Met Its Initial Burden to Demonstrate Absence of a Genuine Issue of Material Fact; Parents Have Not Shown That There is Sufficient Evidence in Their Favor*

The language of the Settlement Agreement unambiguously provides that through the end of the 2026-2027 school year, Newburyport has no obligation, beyond those set forth within the Settlement Agreement itself, to provide or fund any services for or evaluations of Student, or to convene any Team meetings. These provisions apply “except and unless there is a material change in circumstances altering [Student]’s educational profile and needs.” Consistent with precedent, the parties agree that the BSEA may consider but may not interpret or enforce the Settlement Agreement.[[43]](#footnote-43)

* + 1. Newburyport is not required to convene a Team meeting

Parents’ first argument is that their *Hearing Request* is not barred by the Settlement Agreement, because they are requesting that the District determine that Student has a disability in accordance with the IDEA. Even viewing the evidence in the light most favorable to Parents, I conclude that Newburyport has established that the unambiguous language of the Settlement Agreement releases the District from any obligation it may have had to convene a Team meeting to consider Student’s eligibility for special education. Parents have not, and cannot, set forth specific facts showing that this issue could reasonably be resolved in their favor; there is no evidence, much less “sufficient evidence” in their favor on this point.[[44]](#footnote-44)

* + 1. There is no obligation to amend or modify a settlement agreement because a party believes it is no longer appropriate

Second, Parents argue that “a settlement agreement that is no longer appropriate nor effective to the purpose of the agreement results in either an amendment, a change, or a new contract of appropriate wording.” Parents provide no legal authority to support their assertion that it would be appropriate for this Hearing Officer to essentially “undo” their settlement agreement. As former Hearing Officer Bill Crane and Hearing Officer Sara Berman have both explained, allowing an evidentiary hearing on a matter that has been addressed and resolved via a settlement agreement would undermine both the relevant provisions of federal and state special education law and “the integrity and efficacy of the settlement process.”[[45]](#footnote-45)

* + 1. There is no genuine issue of material fact as to a material change in circumstances altering Student’s educational profile

Parents contend that the recommendations arising out of the MGH report, which was completed and presented to the District less than two months after the parties entered into the Settlement Agreement, constitute a material change in circumstances altering Student’s educational profile and needs. As such, the Settlement Agreement does not operate as a bar to Parents’ request that Newburyport provide or fund additional services for Student. Viewed in the light most favorable to Parents and “indulging all reasonable inferences” in their favor,[[46]](#footnote-46) the facts suggest that, according to Ms. Ghiringhelli, the services set forth in the Settlement Agreement are not sufficient to support Student, and that Newburyport personnel agree with this opinion. The uncontested facts also demonstrate that Parents believe Student was diagnosed with an SLD in May 2023, and that the MGH evaluation had already been scheduled and was pending at the time the parties entered into the Settlement Agreement. Although it appears that the MGH evaluation resulted in new recommendations regarding frequency and methodology of instruction for Student in mid-November 2024, there is no evidence before me to suggest that Student’s educational profile changed materially between the signing of the Settlement Agreement on October 4, 2024 and the completion of Ms. Ghiringhelli’s testing less than one month later.

This situation is similar to that addressed in *South Kingstown*, where Parent contended that her request for additional evaluations arose from a change in the conditions that prevailed at the time she entered into the settlement agreement.[[47]](#footnote-47) In that case, the Court disagreed, finding that Parent had been concerned about dyslexia both before and after she entered into the settlement agreement, and that she had failed to identify specific changes in her son’s behavioral presentation that occurred after the settlement agreement.[[48]](#footnote-48) The Court held that the record did not demonstrate a sufficient change in circumstances “to overcome the bar posed by the Settlement Agreement.”[[49]](#footnote-49)

Viewing the instant matter in the light most favorable to Parents, I conclude that there may have been a material change in Parents’ opinions and beliefs regarding the efficacy of the services to which they had agreed, and/or a material change in expert recommendations for how to best teach Student and Newburyport personnel’s beliefs regarding same. However, Parents have set forth no specific facts that would allow for a reasonable conclusion that there was a material change in circumstances *altering Student’s educational profile and needs.* Newburyport’s willingness to meet with Ms. Ghiringhelli regarding her findings and to meet with Parents regarding the MGH report and their concerns about Student’s progress does not impose on Newburyport an obligation to offer anything other than the services set forth in the Settlement Agreement. Parents, therefore, cannot overcome the bar posed by the Settlement Agreement in this case.

**CONCLUSION AND ORDER**

Upon consideration of Newburyport’s *Motion for Summary Judgment* and accompanying documents, as well as Parents’ *Opposition* thereto and accompanying documents and the oral arguments of the parties, I find that Newburyport has met its burden to show that there are no genuine issues as to any material fact and that the District is entitled to judgment as a matter of law.[[50]](#footnote-50) Parents’ *Hearing Request* is barred by the Settlement Agreement entered into by the parties in October 2024. Moreover, given the procedural posture of a summary judgment motion, the unambiguous terms of the Settlement Agreement, and the timing of Parents’ request for subpoenas, I find that Newburyport is entitled to prevail on its *Motion to Quash*.

Nothing contained herein prevents the parties from renegotiating or amending the Settlement Agreement voluntarily.

*So Ordered.*

By the Hearing Officer:

/s/ Amy Reichbach

Amy M. Reichbach

Dated: May 20, 2025

COMMONWEALTH OF MASSACHUSETTS

BUREAU OF SPECIAL EDUCATION APPEALS

EFFECT OF BUREAU DECISION AND RIGHTS OF APPEAL

# Effect of the Decision

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Accordingly, the Bureau cannot permit motions to reconsider or to re-open a Bureau decision once it is issued. Bureau decisions are final decisions subject only to judicial review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. Rather, a party seeking to stay the decision of the Bureau must obtain such stay from the court having jurisdiction over the party’s appeal.

Under the provisions of 20 U.S.C. s. 1415(j), “unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement,” during the pendency of any judicial appeal of the Bureau decision, unless the child is seeking initial admission to a public school, in which case “with the consent of the parents, the child shall be placed in the public school program.” Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. School Committee of Burlington v. Massachusetts Department of Education, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child’s placement during the pendency of judicial proceedings must seek a preliminary injunction ordering such a change in placement from the court having jurisdiction over the appeal. Honig v. Doe, 484 U.S. 305 (1988); Doe v. Brookline, 722 F.2d 910 (1st Cir. 1983).

# Compliance

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

# Rights of Appeal

Any party aggrieved by a decision of the Bureau of Special Education Appeals 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 Bureau decision. 20 U.S.C. s. 1415(i)(2). An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

# Confidentiality

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See Webster Grove School District v. Pulitzer Publishing Company, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

Record of the Hearing

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.

1. Parents captioned their filing *Opposition to Motion for Summary Judgment and BSEA Filing #2508136 Description of Issue and Proposed Resolution*. [↑](#footnote-ref-1)
2. This subpoena was not issued until April 24, 2025, as Parents did not provide all required information for the issuance of a subpoena for several days. [↑](#footnote-ref-2)
3. The undersigned Hearing Officer responded informally, noting that given the proximity of the filing of the *Motion to Quash* to the motion session scheduled for May 1, 2025, the formal ruling on the District’s *Motion to Quash* would be deferred until after the motion session addressing Newburyport’s *SJ Motion.* During the motion session, the Hearing Officer told Parents they could respond to the *Motion to Quash* within seven days of its filing, consistent with Rule VI(C) of the Bureau of Special Education *Hearing Rules for* *Special* *Education* *Appeals* (BSEA *Hearing Rules*).

   Although Newburyport filed a document entitled *Response to the Parents’ Opposition to the District’s Motion to Quash and Opposition to Witness Testimony on the District’s Motion for Summary Judgment* on May 12, 2025, I do not consider this response to Parents’ response to the District’s motion in issuing the instant Ruling, as this District response was not specifically allowed, and to do otherwise might invite endless cycles of responses to each party’s responses to the other’s motions. [↑](#footnote-ref-3)
4. See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986); *Maldonado-Denis v. Castillo-Rodriguez,* 23 F.3d 576, 581 (1st Cir. 1994). [↑](#footnote-ref-4)
5. In their *Opposition to SJ Motion*, Parents indicated that Dr. Katrina Boyer PHD, ABPP-CN, identified Student as having a specific learning disability on May 31, 2023. The report itself, however, submitted by Parents with their initial *Hearing Request*, indicates that Student “should qualify for special education services. . . under the neurological impairment designation given his history of seizure disorder that contributes to brain dysfunction manifesting in memory, executive, fluency, and fine motor dysfunction.” Dr. Boyer recommended a general education setting with, among other things, resource class instruction; special education support for English Language Arts to support fluency and written expression organization; and speech and language therapy in the home setting. (*Hearing Request* attachments) [↑](#footnote-ref-5)
6. The Settlement Agreement did not define the term “material change in circumstances.” [↑](#footnote-ref-6)
7. Parents frame this conversation as demonstrating Newburyport’s agreement that the services outlined in the Settlement Agreement are not appropriate for Student. [↑](#footnote-ref-7)
8. BSEA *Hearing Rule* VII(B). [↑](#footnote-ref-8)
9. BSEA *Hearing Rule* VII(C). [↑](#footnote-ref-9)
10. 801 CMR 1.01(10)(g). [↑](#footnote-ref-10)
11. M.G.L. c. 30A, §12(4). [↑](#footnote-ref-11)
12. 801 CMR 1.01(7)(h). [↑](#footnote-ref-12)
13. See *Anderson*, 477 U.S. at 247; *Maldonado-Denis,* 23 F.3d at 581; see also *In Re: Student v. Medway Public Schools,* BSEA #2410703 (Figueroa, 2024) (applying this standard); *Student v. Littleton Public Schools*,BSEA #2313812 (Putney-Yaceshyn, 2023) (same). [↑](#footnote-ref-13)
14. *French v. Merrill*, 15 F.4th 116, 123 (1st Cir. 2021) (internal citation omitted). [↑](#footnote-ref-14)
15. See *Anderson*, 477 U.S. at 248. [↑](#footnote-ref-15)
16. *Id*. [↑](#footnote-ref-16)
17. See *Adickes*, 398 U.S. at 157; *Anderson*, 477 U.S. at255; see also *Maldonado-Denis*, 23 F.3d at 581 (summary judgment involves “scrutinizing the entire record in the light most flattering to the nonmovant and indulging all reasonable inferences in that party’s favor”). [↑](#footnote-ref-17)
18. *Anderson*, 477 U.S. at 250. [↑](#footnote-ref-18)
19. *Maldonado-Denis*, 23 F.3d at 581 (internal citation omitted). [↑](#footnote-ref-19)
20. *Anderson*, 477 U.S. at 249; *Mack v. Great Atl. & Pac. Tea Co.,* 871 F.2d 179, 181 (1st Cir. 1989). [↑](#footnote-ref-20)
21. *Medina-Munoz v. R.J. Reynolds Tobacco Co.,* 896 F.2d 5, 8 (1st Cir. 1990). [↑](#footnote-ref-21)
22. See *Anderson*, 477 U.S. at 249-50. [↑](#footnote-ref-22)
23. 20 USC §1415(b)(6); see M.G.L.C. 71B §2A; 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a). [↑](#footnote-ref-23)
24. See *Fry v. Napoleon*, 580 U.S. 154, 167-68 (2017) (holding that even where a dispute is between a child with a disability and her school district, if it does not involve the child’s right to a free appropriate public education under the Individuals with Disabilities Education Act, a hearing officer does not have jurisdiction over that dispute); *In Re: KB and Ashland Public Schools & Department of Mental Health and Department of Children and Families*, BSEA #2508203 (Mitchell, 2025) (Ruling) and cases cited at n.12. [↑](#footnote-ref-24)
25. See, e.g., *In Re: KB* (noting that the BSEA has historically declined to take jurisdiction over issues of interpretation or enforcement of settlement agreement terms); *In Re: Student & Andover Public Schools,* BSEA #2007733 (Berman, 2020) (Ruling) (recognizing the absence of conclusive guidance within Massachusetts and the First Circuit regarding the BSEA’s subject matter jurisdiction, or lack thereof, “to interpret privately negotiated settlement agreements concerning special education matters and determine whether either party has breached such an agreement”); *In Re: Student R. and Lincoln-Sudbury Public Schools*, BSEA #112546 (Figueroa, 2010) (Ruling) (“Nothing in the IDEA, the Massachusetts special education law or the regulations promulgated under those statutes grants a BSEA Hearing Officer the authority to enforce agreements.”) [↑](#footnote-ref-25)
26. *In Re: KB*; see *In Re: Student and Milford* *Public Schools*, BSEA #1601412 (Berman, 2015); see also *In Re: Student R.* (“[e]ven if Parties agree between themselves that the BSEA will have authority to ‘enforce’ agreements, such language is insufficient to bind the BSEA where it otherwise lacks statutory authority.”) [↑](#footnote-ref-26)
27. See 20 USC 1415(e)(2)(F)(iii), (f)(1)(B)(iii)(II); *In Re: KB*; *In Re: Milford Public Schools*; In *Re: Student R.* [↑](#footnote-ref-27)
28. *In Re: Andover Public Schools*. [↑](#footnote-ref-28)
29. *In Re: Longmeadow Public Schools*, BSEA #072866 (Crane, 2008) (Ruling); see *In Re: Andover Public Schools* (noting that allowing an evidentiary hearing on a matter that has been addressed and resolved via a settlement agreement “would undermine the relevant provisions of federal and state special education laws as well as the underlying legislative purpose and public policy favoring informal, voluntary resolution of special education disputes”). [↑](#footnote-ref-29)
30. *South Kingstown Sch. Comm. v. Joanna S. ex rel. P.J.*, 773 F.3d 344, 354 (1st Cir. 2014); see *In Re: K.B.*; see also *D.R. ex rel. M.R. and B.R v. East Brunswick Bd. of Educ.*, 109 F.3d 896, 899-900 (3rd Cir. 1997) (observing that District Court held that where unambiguous language of settlement agreement required district to pay for an increase in the cost of a particular array of services previously provided, and the service for which parents sought payment was not within that array, the district “would not be liable for the cost of [that service] under the terms of the settlement agreement, *unless* [Student]’s personal circumstances had changed since the parties entered the agreement” (emphasis in original)). [↑](#footnote-ref-30)
31. *South Kingstown*, 773 F.3d at 354. [↑](#footnote-ref-31)
32. *Id*. [↑](#footnote-ref-32)
33. *Id*. at 354, 355. [↑](#footnote-ref-33)
34. *Id*. at 354. [↑](#footnote-ref-34)
35. *East Brunswick Bd. of Educ.*, 109 F.3d at 900-901 (emphasis in original). [↑](#footnote-ref-35)
36. *Id*. at 900, 901. [↑](#footnote-ref-36)
37. *Id*. at 901. [↑](#footnote-ref-37)
38. M.G.L. c. 30A, §12(4). [↑](#footnote-ref-38)
39. See M.G.L. c. 30A, §12(4); BSEA *Hearing Rule* VII(B). [↑](#footnote-ref-39)
40. See *Anderson*, 477 U.S. at 247; *Maldonado-Denis,* 23 F.3d at 581. [↑](#footnote-ref-40)
41. See *Anderson*, 477 U.S. at 247; *Maldonado-Denis,* 23 F.3d at 581. [↑](#footnote-ref-41)
42. *Cf. Student v. Belmont Public Schools*, BSEA #2509536 (Reichbach, 2025) (Ruling) (denying summary judgment because open questions of material fact existed and could only be resolved through live testimony). [↑](#footnote-ref-42)
43. See *In Re: KB*; *In Re: Andover* *Public Schools*; *In Re: Student R*. [↑](#footnote-ref-43)
44. See *Anderson*, 477 U.S. at 247; see *Maldonado-Denis,* 23 F.3d at 581. [↑](#footnote-ref-44)
45. *In Re: Longmeadow Public Schools; In Re: Andover Public Schools*; see *East Brunswick Bd. of Educ.*, 109 F.3d at 901. [↑](#footnote-ref-45)
46. *Maldonado-Denis*, 23 F.3d at 581. [↑](#footnote-ref-46)
47. See 773 F.3d 354. [↑](#footnote-ref-47)
48. See *id*. [↑](#footnote-ref-48)
49. *Id*. [↑](#footnote-ref-49)
50. See *Anderson*, 477 U.S. at 247; *Maldonado-Denis,* 23 F.3d at 581. [↑](#footnote-ref-50)