

# COMMONWEALTH OF MASSACHUSETTS

## Division of Administrative Law Appeals

### Bureau of Special Education Appeals

In Re: Isabel<sup>1</sup>

&

BSEA# 14-06301

Marblehead Public Schools

### **RULING ON MARBLEHEAD'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

This matter comes before the BSEA on the Motion of the Marblehead Public Schools for Partial Summary Judgment on several claims advanced by the Parent in her Hearing Request. The Parent does not oppose the Motion so long as it is appropriately circumscribed.

#### **LEGAL STANDARD**

Motions for Summary Judgment in administrative proceedings before the Bureau of Special Education Appeals are evaluated according to the traditional standards set out at Rule 56(c) of the Federal Rules of Civil Procedure. Entry of Summary Judgment is proper when the pleadings, sworn discovery responses and affidavits show that there is no genuine issue of material fact and that the movent is entitled to judgment as a matter of law on those undisputed facts. 801 CMR 1.01(7)(h). BSEA Rule VII. *Zelda and Bridgewater-Raynham*, 12 MSER 4 (2006).

#### **PERTINENT FACTS**

The Parties agree on the following undisputed facts:

1. Isabel, a resident of Marblehead, has been determined to be eligible for special education services continuously since 2006. (Hearing Request)
2. The Individualized Education Program developed by Marblehead for Isabel for the 2011-2012 academic year was fully accepted by the Parent. The Parent does not claim any failure to

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<sup>1</sup> "Isabel" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

implement the accepted program nor did she request a due process hearing during the viability of the 2011-2012 IEP. (S-1)

3. The Individualized Education Program developed by Marblehead for Isabel for the 2012-2013 academic year was fully accepted by the Parent. The Parent does not claim any failure to implement the accepted program nor did she request a due process hearing during the viability of the 2012-2013 IEP. (S-2)

4. The Parent accepted the April 2013 – April 2014 IEP proposed by Marblehead in May 2013. (S-3) The Parent subsequently accepted two Amendments to that IEP in June 2013 and in October 2013. The Parent did not reject any portion of the IEP or the Amendments, did not request the assistance of the BSEA, and does not claim that Marblehead failed to implement any component of the accepted 2013-2014 IEP. (S-4; S-5)

5. After a Team meeting in January 2014 the Parent accepted an Amendment to the 2013-2014 IEP providing for additional home-based services between January and April 2014. (S-6) By letter dated February 10, 2014 the Parent requested that Marblehead develop an IEP for a residential therapeutic program for Isabel and notified the District of her intent to make a unilateral special education placement. (S-7)

6. On March 5, 2014 the Parent filed a Request for Hearing at the BSEA seeking:

- a.) A determination that the current IEP does not provide a free appropriate public education for Isabel;
- b.) A finding that the IEPs for the previous two school years, 2011-2012 and 2012-2013, did not provide a free appropriate public education to Isabel;
- c.) An Order that Isabel currently requires placement in a residential therapeutic school in order to receive a free appropriate public education. (Hearing Request)

#### CONCLUSIONS OF LAW

The Parties agree that the IEPs in effect for the school years 2011-2012 and 2012-2013 were fully accepted by the Parent, were implemented by Marblehead and were not the subject of any special education related due process proceeding. Courts and the BSEA have consistently held that accepted IEPs that have not been rejected or the subject of a due process proceeding during their period of viability and have, by their own terms, “expired” may not form the basis of a “look back” Hearing. *Joseph Doe v. Hampden-Wilbraham Regional School District*, 715 F. Supp. 2d 185 (D.Mass. 2010). *See also: New Bedford and Cody*, 17 MSER 131 (Oliver 2011).

Applying this principle to the instant matter I find the Parent may not now challenge the appropriateness of the expired 2011-2012 and 2012-2013 IEPs as they were accepted and implemented and there has been no allegation of any procedural impropriety which might weigh against the customary limit to BSEA oversight. Therefore Marblehead is entitled to Summary

Judgment in its favor and to Dismissal of the Parent's claims concerning the 2011-2012 and 2012-2013 IEPs.

The Parent did file an objection, and a request for a due process Hearing, during the "lifetime" of the 2013-2014 IEP. Therefore the Parents claims as to the 2013-2014 IEP and the three Amendments to it are properly before the BSEA.

ORDER

Marblehead's Motion for Partial Summary Judgment as to the Student's 2011-2012 and 2012-2013 IEPs is GRANTED.

This matter will proceed on the Parent's claims concerning the appropriateness of the 2013-2014 IEP developed by Marblehead for Isabel and on the Parent's request for an alternate special education placement

By the Hearing Officer

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Lindsay Byrne  
April 25, 2014

