

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In Re: “Beryl”¹ and Pentucket R.S.D.

BSEA #1409900

RULING ON SCHOOL’S MOTION TO DISMISS

This matter comes before the Bureau of Special Education Appeals on the Motion of the Pentucket Regional School District to Reconsider its previously filed Motion to Dismiss. Pentucket originally filed a Motion to Dismiss on June 23, 2014 shortly after Beryl launched this appeal. The School renewed its Motion on October 7, 2014. Due to ongoing proceedings at the BSEA and in federal court involving parental claims arising out of similar and predicate facts, the BSEA took the School’s Motion under advisement. See: Scheduling Order, April 15, 2015. (Administrative Record) After those proceedings were resolved by a BSEA Decision issued on October 23, 2015 Pentucket renewed its Motion to Dismiss. A Hearing on the School’s Motion was held on January 26, 2016. Beryl did not attend the Hearing.² She did not respond to the BSEA’s inquiries or orders in any substantive fashion. She neither opposed dismissal nor offered any argument why this matter should continue to hearing. The BSEA sent Beryl a copy of the tape recording of the Hearing as well as a written transcript of the proceedings. The record was held open for 30 days to receive any contribution from Beryl. There was none.

On March 2, 2016 the BSEA ruled that dismissal of this matter was premature, as the status of any potential appeal of the October 23, 2015 Decision in BSEA#12-8636, its earlier incarnation, was unclear. “Ruling on School Motion to Dismiss”, March 2, 2016 (Administrative Record) The Appeal period for that Decision now having expired without action from the losing Party, the School renews its Motion to Dismiss on its original and additional grounds.

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¹ “Beryl” is a pseudonym selected by the Hearing Officer to protect the privacy of the Student in documents available to the public.

² A summary of the lengthy procedural history of this matter may be found in the “Ruling on School’s Motion to Dismiss”, March 2, 2016 (Administrative Record).

The single issue presented for Decision in BSEA #1409900, as articulated by the appealing Student, is:

“Whether Pentucket had discretion to refuse to comply with Petitioner’s request pursuant to 603 CMR 28.07(5) and 34 CFR 300.520 (see PNPs 2008) without prior written notice (34 CFR 300.503) and whether this refusal interfered with Petitioner’s right to a timely due process hearing (34 CFR 300.511) on all issues complained of in BSEA 12-8636.

In other words, Beryl alleges here that, in July 2012, after she had turned 18 having never been found eligible for special education services, and having accepted a high school diploma, Pentucket improperly declined her designation of her parent as her educational decision-maker for special education purposes. Beryl asserts that as a result of Pentucket’s refusal to accept the delegation of special education decision-making authority to her parent, her procedural rights to participate in special education decisions were violated. Beryl further asserts that Pentucket’s refusal resulted in substantive violations of her right to a free, appropriate public education.

Whether Pentucket acted properly in declining to accept Beryl’s transfer of educational decision-making rights in July 2012 turns, in the first instance, on whether Beryl had any special education rights to transfer. Beryl’s IDEA eligibility status was the subject of the proceedings in BSEA#12-8636. The instant matter could not be determined until Beryl’s status had been resolved after the Hearing and Decision in that predicate matter.

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The BSEA appeal #12-8636 involved Beryl’s Parent’s challenge to the ineligibility findings made by Pentucket R.S.D. during Beryl’s minority and to the award of a high school diploma to her. The Decision in BSEA #12-8636 determined both that Pentucket properly found that Beryl was not eligible for special education services during her minority and that Pentucket properly awarded Beryl a high school diploma.³ That BSEA finding has not been appealed and is thus the law of the case.

DISCUSSION

The School advances several grounds for dismissal, all of which have merit. It is sufficient, however, to address just two.

Substantially, as discussed above, the issue presented by the Student in June 2014 has been resolved in the School’s favor. The finding in BSEA #12-8626 that Beryl’s proper status in June 2012 was as a general education graduate of Pentucket High School is the predicate fact necessary to determine the outcome of the instant appeal. In July 2012, when Beryl was 18, she had graduated from Pentucket R.S.D. as a general education student and thus had no “educational decision making rights” under the IDEA to transfer to her parent. As either a regular student, or as a graduate, the IDEA sections concerning delegation of educational

³ *In Re: Pentucket Regional School District*, 21 MSER 222 (2015)

decision-making authority at age of majority did not apply to Beryl. Pentucket was, therefore, not obligated in July 2012 to accept Beryl's designation of her mother as her surrogate decision-maker, nor to give her "prior written notice" of its refusal to accept her designation, as Beryl was not then, nor at any relevant time, entitled to those IDEA protections. No other issues remain for resolution. Therefore, dismissal for failure to state a claim upon which relief can be granted, is warranted. 801 CMR 1.01 (7)(g)(3).

Procedurally, as outlined in prior rulings and amply supported in the administrative record, the Student has not pursued her appeal in any meaningful way. Despite generous accommodations, extensions and explanations over the 2 year course of this appeal Beryl has failed to adhere to BSEA Rules, to comply with BSEA Orders, to attend scheduled due process events, to respond to legitimate inquiries and directions from the Hearing Officer and counsel for the school district, to file required pleadings, responses and status reports, and to take any cognizable action to advance this matter to hearing. Evidence of the Student's long term inaction, particularly in the face of the School's vigorous efforts to secure a final substantive ruling from the BSEA, exceeds the threshold necessary to justify a dismissal for failure to prosecute pursuant to 801 CMR 1.01 (7) (g) (2).

As these two independent, complementary, grounds for dismissal exist I do not reach the other arguments advanced by the School.

ORDER

The Motion of the Pentucket Regional School District to Dismiss BSEA #1409900 is GRANTED.

By the Hearing Officer

Lindsay Byrne
Dated: May 24, 2016