

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS

In Re: Revere Public Schools

BSEA No. 1507485

RULING ON MOTION TO DISMISS OF REVERE PUBLIC SCHOOLS

INTRODUCTION

This case involves a twenty year old student (Student) with disabilities whom the Revere Public Schools (Revere or School) deemed to have completed local high school graduation requirements in June 2014. At that time, Student and Parents disputed Revere's position and refused Student's diploma. The parties resolved that dispute via mediation with a mediator employed by the Bureau of Special Education Appeals (BSEA). Under the mediation agreement (Agreement) Revere agreed to fund Student's placement at an out-of-district collaborative transitional program for summer 2014 and the 2014-2015 school year. The Agreement specified that "stay put" rights did not attach to the collaborative placement and that Student's special education eligibility would terminate in June 2015. Revere fully implemented the Agreement.

Parents filed the instant hearing request seeking to extend Student's placement until Student reaches the age of 22. Revere seeks dismissal of the hearing request, arguing that Parents' claim is precluded by the 2014 Agreement. Parents argue that they made a mistake in signing the Agreement, felt coerced and did not fully appreciate its binding effect, and should be allowed to proceed on the current claim.

PROCEDURAL HISTORY

On May 22, 2015 Parents filed a hearing request with the BSEA seeking an order directing Revere to fund Student's collaborative placement until he reaches age 22, i.e., approximately two additional years.

On May 26, 2015 Revere filed the instant *Motion to Dismiss*. Parents filed an *Opposition* to the School's *Motion* on June 15, 2015. A telephonic motion session was held on June 23, 2015 at which both parties argued their respective positions.

ISSUE PRESENTED

At issue with respect to this *Motion* is whether the mediation agreement which the parties signed in May 2015 and which Revere fully implemented precludes the Parents from seeking additional services for Student.

Position of School

The hearing request must be dismissed because the Parents and Student have failed to state a claim entitling them to relief from the BSEA. Parents and Student explicitly waived any such entitlement in 2014 when they entered a binding mediation agreement with the School.¹ Mediation agreements are legally binding and enforceable. As a matter of law and policy such agreements must be upheld, and not undone by the BSEA after the fact, simply because a party now regrets having signed the agreement.

Position of Parents

Parents believe that because of his disability and inadequate transition services from Revere, Student ended his senior year at Revere High School without having the social, behavioral, vocational or emotional skills necessary to transition to adult life. Student needs continued instruction in these skill areas until he reaches the age of 22 if he is to make that transition successfully. Parents signed the one-year Agreement that is the subject of this *Motion* reluctantly, with misgivings, because they believed that if they did not do so, Student would lose any opportunity for further services. Shortly after Student began attending the agreed-upon program, Parents realized that he would need an additional two years of services. Long before they requested a hearing Parents made numerous attempts to re-negotiate or extend the Agreement with Revere, but Revere was unwilling to do so. Dismissing this case would punish Student unfairly, denying him services that he needs, simply because Parents were unable to negotiate more favorable terms in 2014.

FACTS

For purposes of the *Motion*, the following factual assertions are deemed to be true, and are considered in the light most favorable to the party opposing the *Motion*, i.e., Parents.

1. Student is a now 20-year-old young adult with disabilities who shares educational decision-making authority with Parents. Student has autism as

¹ The School argued in the alternative that the Parents lack standing because Student is an adult and his own guardian. During oral argument, Parent represented that Student and Parents share educational decision-making responsibility. Revere does not contest this representation; therefore, I decline to find that Parents lack standing to pursue this appeal.

well as significant anxiety. Student's autism and anxiety affect his ability to function independently both within and outside of the school setting.

2. Student attended Revere High School as a special education student through the 2013-2014 school year. At the end of the 2013-2014 school year, Revere determined that Student had passed MCAS and met local graduation requirements. Parents disagreed and notified Revere that they would reject Student's diploma.
3. On May 7, 2014 Parents and representatives from Revere attended a mediation session with a BSEA mediator. Neither Parents nor Revere were represented by counsel but Parents were accompanied by an advocate. The mediation resulted in the following Agreement, relevant portions of which are reproduced below:

The following is the Agreement reached at Mediation between the Parents and the Revere Public School District ("Revere" or "the District").

1. For the purposes of settlement, the District agrees to fund [Student's] tuition at the North Shore Consortium's SOAR Program for the Summer 2014 Program and for the 2014/2015 school year with transportation...There are no stay put rights attached to this placement and transportation...
2. The Parents and the District agree that [Student] will graduate in June 2015, at the end of the 2014/2015 SOAR Program. Beyond June 2015, the District will be held harmless for future educational services for [Student] unless some catastrophic or unanticipated illness or injury drastically changes his education profile or needs.
3. The District will allow [Student] to participate in the Revere High School Graduation Ceremony for the Class of 2014. [Student] will not receive an actual Revere High School diploma until June 2015...

This Agreement has been reached through discussion of this student's educational needs. The concerns of both school personnel and the parent(s) have been voiced and the parties, whose signatures appear below, have made the above agreement in good faith...Either Party may contact the mediator if further clarification is needed about this agreement or if they feel that the agreement is not being carried out.

4. The Agreement was signed by Parents and Revere's Assistant Director of Special Education, Wesley Pierce. One week later, on May 13, 2014, the same mediator met with Parent, Student, and Mr. Pierce so that Student, who was over the age of 18, could sign the Agreement. At that meeting, Parent, Student, and Mr. Pierce signed a duplicate of the original Agreement.
5. The parties agree that the Agreement was fully implemented in that Revere funded the SOAR program and transportation for the agreed-upon period. Parents assert, and the School does not dispute, that Student had a successful experience at the SOAR Program during summer 2014 and the 2014-2015 school year.
6. Beginning in approximately March 2015 Parents contacted the mediator and various Revere administrators because they believed that the summer and single school year at SOAR would be insufficient to meet Student's needs. Parents believe that Student needs to stay in the SOAR program until the age of 22 in order to function with appropriate independence. Parents offered to return to mediation on this issue and/or to negotiate a new agreement with Revere. In an effort to reach a new agreement, Parents offered to transport Student themselves or reduce the number of days per week of Student's attendance. Revere was unwilling to return to mediation or to renegotiate the original Agreement.

FINDINGS AND CONCLUSIONS

Under the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3) and Rule 17B of the *BSEA Hearing Rules for Special Education Appeals*, a BSEA hearing officer may allow a motion to dismiss if the party requesting the appeal fails to state a claim on which relief can be granted.

Since this Rule is analogous to Rule 12(b)(6) of the Federal and Massachusetts Rules of Civil Procedure, BSEA hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim. Specifically, a hearing officer must consider as true all facts alleged by the party opposing dismissal (in this case, Parents) and should not dismiss the case if those facts, if proven, would entitle the non-moving party to relief that the BSEA has authority to grant. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Ocasio-Hernandez v. Fortunato-Burset*, 640 F. 3d 1 (1st Cir. 2011).

Put another way, a motion to dismiss will be denied if "accepting as true all well-pleaded factual averments and indulging all reasonable inferences in the plaintiff's favor...recovery can be justified under any applicable legal theory." Applying this principle to the instant case, Parents' hearing request cannot be dismissed unless Parents have no legal basis for relief even if the facts they assert are deemed to be true.

As amply argued in the School's *Motion to Dismiss*, it is well settled that a BSEA mediation agreement, signed by all parties and fully implemented, precludes a subsequent BSEA hearing on the issues resolved by the agreement. To conclude otherwise would undermine the relevant provisions of federal and state special education law as well as the underlying legislative purpose and public policy favoring informal, voluntary resolution of special education disputes. See 20 USC Sec. 1415(e)(2)(F), 34 CFR Sec. 300.506; *Masconomet Regional School District*, BSEA No. 1102194 (Oliver, Nov. 15, 2010).

In the instant case, the Parents and Student executed a mediation agreement in 2014. Parents and their advocate attended the first mediation session with School personnel and signed the Agreement at issue here. A second session was held one week later at which Parent, Student and a School administrator signed a duplicate copy of the Agreement. The School was not represented by counsel at either mediation session.

As with any contract, each party to the Agreement bargained for and received certain benefits in consideration for giving up other rights or benefits. Specifically, Student and Parent gained the SOAR placement for summer 2014 and the 2014-2015 school year without having to engage in litigation. In exchange, Student and Parent gave up the right to "stay put" at the SOAR placement as well as the right to future educational services from Revere after expiration of the 2014-2015 SOAR session. Revere funded Student's placement and transportation at SOAR during the period covered by the Agreement despite its belief that it owed Student no services after June 2014. In return, Revere gained the assurance that it would not be required to provide Student with any future educational services after June 2014.

There is no dispute that Revere fulfilled its obligations under the terms of the Agreement, and Parents and Student received the "benefit of their bargain." Moreover, although Parents later came to believe that they should not have settled for one year's worth of services, and argue that they did not fully understand the implications or binding nature of the Agreement, they have introduced no evidence other than these assertions that would lead me to question the voluntariness or validity of the mediated Agreement itself.² Parents and Student thus have waived any entitlement to the relief requested in exchange for benefits they received in a legally binding and fully implemented mediation agreement.

In this case, Parents are second-guessing their decision to sign the Agreement. Clearly, Parents are seeking every possible avenue to support and

² In any event, if Parents truly believe that the Agreement was invalid, the IDEA and corresponding regulations explicitly state that issues concerning enforcement of mediation agreements may be addressed by state or federal courts. See 20 USC Sec. 1415(3)(2)(F)(iii); 34 CFR Sec. 300.506(b)(7).

assist their son as he enters adulthood; however, the law simply does not give the BSEA the authority to undo a fully implemented mediation agreement. It is understandable that Parents now wish they had been able to negotiate additional services for Student. Parents should be reminded, however, that the outcome of mediation was a very positive one. They successfully advocated for and obtained a summer and school year of beneficial transition programming for Student, despite Revere's position that Student was ineligible for any further services as of June 2014. Moreover, through the mediation process Parents were able to secure these services in a timely manner without the time, cost, risk, or uncertainty of litigation. If Parents had proceeded to a hearing in spring 2014, they would have risked obtaining no additional services whatsoever from Revere. There certainly was no guarantee of a better outcome than the one obtained through mediation.

CONCLUSION AND ORDER

Because Parents have failed to state a claim on which relief may be granted, their Hearing Request in this matter is DISMISSED, with prejudice.

By the Hearing Officer

Sara Berman

Dated: July 27, 2015

EFFECT OF DISMISSAL

This Dismissal by the Bureau of Special Education Appeals is a final action and is not subject to further agency review. Because 20 U.S.C. s.1415(i)(2)(A) requires the Bureau decision to be final and subject to no further agency review, the Bureau cannot permit motions to reconsider or to re-open a Bureau decision once it is issued. Any party aggrieved by the Bureau decision may file a complaint in the U.S. District Court for the District of Massachusetts or in the Massachusetts Superior Court within ninety (90) days from the date of dismissal for review of the Bureau decision. 20 U.S.C. s.1415(i)(2)(B).

