

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals
Bureau of Special Education Appeals

RULING ON BROCKTON’S MOTION FOR SUMMARY JUDGMENT

In Re: Arnold¹

& Brockton Public Schools

BSEA #1600765

& Weymouth Public Schools

This matter comes before the Bureau of Special Education Appeals with an unusual procedural history. The Parent requested a Hearing on July 24, 2015 asserting that Weymouth, the town in which Arnold resides and is enrolled, refused her request for an independent educational evaluation (hereinafter “IEE”) and seeking an Order requiring Weymouth to arrange and fund one. Weymouth asserted that the Parent was not entitled to an IEE as Arnold was a new resident, the evaluation to which the Parent objected had been conducted by Brockton, the district previously responsible for Arnold’s special education and that Weymouth was entitled to conduct its own evaluations before responding to the Parent’s IEE Request.

The Hearing began on November 2, 2015. The Parent was pro se. Weymouth was represented by an attorney. It was immediately apparent that there were significant evidentiary gaps. In addition the Parties were not prepared to answer the questions raised by the Hearing Officer concerning the role of the former district of residence with respect to its challenged evaluations. The Hearing Officer then, sua sponte, joined the Brockton Public Schools to this action. On January 8, 2016 Brockton submitted a Response and Motion for Summary Judgment. Neither the Parent nor Weymouth submitted an Opposition or any other Response to Brockton’s Motion.

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

FACTUAL BACKGROUND

The pertinent facts are not in dispute. They are set out in the Order originally joining Brockton and are supplemented by the three exhibits attached to Brockton's Motion for Summary Judgment. For the purpose of this Motion the operative facts are:

1. Arnold is a student with a disability and is entitled for receive a free appropriate public education pursuant to 20 U.S.C 1401 et seq. and M.G.L.c 71B.

2. Arnold was a resident of Brockton in the fall of the 2014-2015 school year. Brockton conducted a reevaluation in November/December 2014. The Team met in December 2014 to develop an Individualized Education Program (hereinafter "IEP") for Arnold. On Dec. 18, 2014 the Parent accepted the IEP which called for Arnold to attend a substantially separate therapeutic program within the Brockton Public Schools. The Parent did not at that time request an IEE.

3. Arnold moved to Weymouth with his mother in February 2015 and has remained a resident since that time. There has been no contact between Arnold's family and the Brockton Public Schools since that move.

4. Arnold is enrolled in and attends school in Weymouth.

5. Sometime before April 15, 2015 the Parent requested that Weymouth arrange for an IEE. Weymouth declined, instead proposing to conduct "an early reevaluation."

6. Weymouth did not request a due process hearing.

7. The Parent requested a due process hearing on July 24, 2015.

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 movant is entitle to judgment as a matter of law on those undisputed facts. 801 CMR 1.01 (7) (h). BSEA Rule VII. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *Zelda and Bridgewater-Raynham*, 12 MSER 4 (2006).

DISCUSSION

The fundamental legal issue presented here is whether the Parent's request for an IEE pursuant to 20 U.S.C § 1415 (b); 34 CFR 300.502 and 603 CMR 28.04 (5) is properly addressed to Brockton, as the school district responsible for conducting the challenged evaluation, or to Weymouth as the district indisputably otherwise responsible for educating Arnold?

It is logical, under the facts presented here, to link the Parent's IEE Request to Brockton. It is Brockton's evaluation with which she disagrees. It is Brockton's evaluation that informs Arnold's current special education program, with which the Parent also disagrees. In most other circumstances a complaint is lodged against, and resolved by, the actor responsible for the event complained of. In special education law, however, residence controls responsibility.

The IDEA requires that all students "residing within the jurisdiction of the local education agency... who are disabled... and are in need of special education and related services... be identified, located and evaluated..." 20 U.S.C. 1414 (a) (1) (a); 34 CFR 300.220.

In Massachusetts the "local education agency" responsible for ensuring the implementation of the IDEA, and of M.G.L. c. 71 B, its state law counterpart, is the public school district. Massachusetts students are eligible for special education services in and through the public school district in which they reside and in which they are enrolled. Massachusetts Special Education Regulations provide:

[603 CMR] 28.10 SCHOOL DISTRICT RESPONSIBILITY

(1) General Provisions. School districts shall be programmatically and financially responsible for eligible students based on residency and enrollment.

Both federal and state statutory schemes require a school district to assume responsibility for the delivery of all special education services—and the procedural guarantees that go along with eligibility for such services—to the students with disabilities living within its geographical boundaries.

Here the special education procedure, an IEE, requested of Weymouth by Arnold's Parent is one of the foundational guarantees found within the IDEA. While it may be inconvenient or burdensome, illogical or even costly to a new district to assume responsibility for a challenged evaluation it did not itself conduct, and may not endorse, it is nevertheless required as one critical component of its general obligation to provide a free appropriate public education to its resident students with disabilities. As soon as Arnold became a resident of Weymouth and enrolled in its public school, Weymouth assumed responsibility for all aspects of his special education, including those related to IEEs. This outcome is analogous to other situations where a student moves into a district with a previous special education history. For example, in most cases the new district immediately assumes responsibility for tuition and transportation to an out-of-district placement a new resident student attends, or for

implementing a home-based program listed on an IEP a new resident student arrives with. Responsibility for responding to a Parent's request for an IEE in accordance with 603 CMR 28.04(5) is in no different a posture. *In Re: Attleborough Public Schools*, 9 MSER 338 (2003)²; See also: *In Re: Shrewsbury 21 MSER 247 (2015), Board of Education of Ewing Township*, 113 LRP 4793 (1/15/13) (citing *Attleborough* with approval on finding that only the district in which a student is a resident is responsible for responding to an IEE request).

CONCLUSION

Weymouth assumed, and Brockton relinquished, full responsibility for ensuring a free appropriate public education to Arnold when he moved to Weymouth in February 2015. That responsibility includes the obligation to respond in a manner consistent with 603 CMR 28.04(5) to the Parent's request for an IEE. Under the current statutory scheme Brockton has no ongoing responsibility for any aspect³ of Arnold's special education programming, including responding to the Parent's Request for an IEE. Therefore Brockton is not a proper party to this matter pursuant to BSEA Rule 1J. As there are no material facts in dispute and Brockton is entitled to judgment in its favor as a matter of law, summary judgment is appropriate.

The Parent's claim remains against Weymouth. The Parties may proceed to Hearing to determine whether Weyouth properly declined the Parent's request for a publicly funded IEE in accordance with 603 CMR 28.04(5).

ORDER

The BSEA Order of November 16, 2015 joining Brockton to this matter is RESCINDED. Brockton's Motion for Summary Judgment is GRANTED.

Dated: February 3, 2016

Lindsay Byrne, Hearing Officer

² The official spelling of the referenced town is "Attleboro."

³ The Parent did not reject any aspect of Arnold's special education program and did not request an IEE, while the family was resident in Brockton. Affidavit of Leah McGunnigle, Brockton Team Chair, B-1 to BMSJ.