

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

IN RE: BERYL¹

&

BSEA #1409900

PENTUCKET REGIONAL SCHOOL DISTRICT

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 Dismiss the Student's Appeal. A brief procedural history puts this Motion in context.

The Parent filed an earlier BSEA appeal which was assigned to a different Hearing Officer and bears the identifier BSEA #12-8636. That matter, involving claims arising during the Student's minority, has had an interesting journey between the BSEA and the U.S. District Court. Beryl filed this separate appeal on June 16, 2014 in order to preserve and present any claims she may have concerning the School's actions after she attained the age of majority in July 2012. The claims at issue in this BSEA matter are separate and distinct from those advanced by the Student's mother in BSEA #12-8636. Beryl is proceeding pro se in all aspects of this appeal.

On June 23, 2014 the School filed a Motion to Dismiss the Student's Appeal primarily on the grounds of vagueness. A prehearing conference was held on July 22, 2014 after which the Student was given leave to Amend her Hearing Request. The Student did not file an Amended Request by the due date of August 20, 2014. A Compliance Order was issued setting an extended submission date of October 9, 2014. On October 6, 2014 that date was extended to November 7, 2014 to accommodate the Student's assertion that she had not received previous BSEA Orders. On October 7, 2014 the School submitted a Motion to Dismiss asserting that the BSEA lacked jurisdiction to entertain certain of the Student's claims that could be discerned from a fair reading of the original Hearing Request. An Amended Hearing Request was never received by the BSEA. The BSEA sent a Show Cause Order to the Parties on December 9, 2014. The Student responded on January 9, 2015 requesting that the matter remain open, but

¹ "Beryl" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

failing to offer an explanation for her lack of response to previous BSEA Orders or to submit the Amended Hearing Request required by them.

In an attempt to advance the matter the Hearing Officer offered the Parties a summary of the pertinent issues likely to be within the jurisdiction of the BSEA that could reasonably be gleaned from Beryl's original Hearing Request. By letter of January 30, 2015 the Hearing Officer set out the issues as:

1. Whether in July 2012, Pentucket properly declined to accept the adult Petitioner's election of decision-making pursuant to 603 CMR 28.07 (5)?
2. If not, whether Pentucket's action infringed upon the IDEA-eligible Petitioner's right to a free appropriate public education?

On March 2, 2015 the Student wrote to disagree with the Hearing Officer's summary of her original hearing request. She set out the issue for resolution in BSEA 14-09900 as:

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.

Beryl also asserted that the issue recited above is not part of any federal court appeal of BSEA #12-8636.²

Pentucket objected to Beryl's restatement of the issues claiming it was impermissibly vague. On April 16, 2015 the BSEA rejected the School's assertion that the Student's issue statement lacked sufficient clarity to permit adequate preparation for Hearing. Accepting Beryl's long-awaited issue statement as the functional equivalent of an Amended Hearing Request, the BSEA determined in an April 16, 2015 Scheduling Order that the question presented by the Student could not be answered without a finding on a contested fact then being heard in BSEA 12-8636:

Before proceeding in this matter to determine whether Pentucket improperly declined to accept the adult Student's designation of decision-making, there must be a determination as to whether the Student was, at the time of that event, IDEA-eligible. The provisions of 603 CMR 28.07 (5) and 34 CFR §300.520 do not come into play if, at the time of the incident complained of, the Student was not eligible for IDEA protections and services. Similarly, if Pentucket properly granted a High School diploma to the Student in June 2012 the provisions of 603 CMR 28.07 (5) did not apply to her in July 2012. Thus the Parties are missing a critical foundational fact without which the issues set out by the Student are not amenable to determination in a BSEA Hearing. As noted above, that fact is the subject of BSEA 12-8636. The outcome of that Hearing will

² At that time BSEA Decision in #12-8636 was on appeal before Judge Woodlock of the U.S. District Court, CA 13-11414 DPW, 14-10071-DPW, 14-10325 DPW. See also 19 MSER 84 (2013).

determine the Student's IDEA status during the 2011-2012 school year, and the effect of that status on the Student's exit from Pentucket High School. Until that appeal is resolved the instant matter cannot move forward.

Scheduling Order, April 16, 2015, Administrative Record. (footnotes omitted)

This matter was then placed "off calendar" pursuant to BSEA Rule IV pending the final resolution of BSEA #12-8636.³

On October 23, 2015 the BSEA issued a Decision in BSEA #12-8636 finding that the Student was not an IDEA eligible student and was properly awarded a regular high school diploma before her 18th birthday. *In Re Pentucket School District 21* MSER 222 (2015) As a result, on December 4, 2015, Pentucket renewed and expanded its Motion to Dismiss this matter.

On December 18, 2015 the BSEA scheduled a hearing on the School's Motion to Dismiss for January 26, 2016. On December 28, 2015 the Student submitted an Opposition to the School's Motion to Dismiss suggesting that the BSEA's Decision in BSEA #12-8636 was not final as it could be appealed.

The BSEA conducted a Hearing on the School's Motion to Dismiss on January 26, 2016. The Student did not attend. The School offered oral argument in support of its Motion. It acknowledged that BSEA #12-8636 could be on appeal to U.S. District Court but asserted that both the appellant's court filings and the matter's status at that Court were unclear. A copy of the tape recording of the Motion Hearing was mailed to the Student on January 26, 2016. A copy of the Court Reporter's transcript of the Motion Hearing was mailed to the Student on February 2, 2016. The record was held open until February 22, 2016 to receive any Student submissions. To date there has been no communication from the Student.

The Parties, unfortunately, are thus in no different positions now than they were in April 2015. Given the uncertainty of the appeal status of BSEA #12-8636, the fact that its final resolution provides the critical foundational fact for the issues articulated by the Student and acknowledging that, while inconvenient and potentially costly to the Parties, delaying resolution of this matter has no substantive or procedural effect on the Parties' IDEA programs, rights, or relief, I find that this matter should continue in "off-calendar" status and that dismissal of this action is not warranted or appropriate at this time.

This matter is continued generally until BSEA #12-8636 is resolved either by an action of U.S. District Court or by the expiration of the period for appealing BSEA #12-8636 to the U.S.

³ BSEA#12-8636 was to be remanded from the U.S. District Court to the BSEA for further proceedings.

District Court. The Parties shall submit written status updates on May 5, 2016, or sooner if circumstances provide clarification and direction.

By the Hearing Officer

Lindsay Byrne
Dated: March 2, 2016