

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

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In Re: Calvin¹

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BSEA #1805218

Norwood Public Schools

RULING ON SCHOOL'S MOTION TO DISMISS

This matter comes before the BSEA on the Motion of the Respondent, Norwood Public Schools, to Dismiss the Hearing Request filed by the Parent on December 20, 2017. Both Parties submitted written briefs in support of their positions. Oral arguments were heard on March 29, 2018.

I. **STANDARD FOR MOTIONS TO DISMISS**

Under the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01(7) (g)(3) and Rule 17B of the *Hearing Rules for Special Education Appeals*, a 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, Parent) and should not dismiss the case if those facts, if proven, would entitle the claimant to relief that the BSEA has authority to grant. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), *Occasion-Hernandez v. Fortunato-Burset*, 640 F.3rd 1 (1st cir. 2001).

II. **FACTUAL BACKGROUND**

The operative facts for the purpose of deciding this Motion to Dismiss are not in dispute. Where there may be a slight shading of nuance I set out the Parent's version of the facts. The Parties' disagreement centers on the application of the relevant law to these facts:

¹"Calvin" is a pseudonym selected by the Hearing Officer used to protect the privacy of the Student in documents available to the public.

1. Calvin is a 17 year old, 11th grade student. He is eligible for special education services on the basis of a specific learning disability and a health disability.
2. Norwood placed Calvin at The Carroll School, a private, approved, special education school for 2nd through 8th grades.
3. On May 15, 2015 the Parties engaged in a BSEA sponsored mediation pursuant to 20 U.S.C. § 1415(e), 34 CFR 300.506, and 603 CMR 28.08(4). Both parties were advised by attorneys. The Parties reached an agreement in the mediation session. The written Mediation Agreement was signed by the Parties on May 15, 2015.
4. The Mediation Agreement provided, among other things, that:
 - a.) Norwood would administratively develop IEPs calling for Calvin's placement as a residential student at the Landmark School for 9th, 10th, 11th and 12th grades, the academic years 2015-2016, 2016-2017, 2017-2018 and 2018-2019 respectively.
 - b.) Norwood would partially fund Calvin's summer placements at the Landmark School.
 - c.) In the event of Calvin's dismissal or termination by the Landmark School, Norwood would reconvene the Team on an expedited basis.
 - d.) With the exception of actions anticipated in the event of dismissal, termination or failure to graduate, Norwood's discharge of the funding and placement obligations set out in the Mediation Agreement would "satisfy all of the District's special education obligations to the Student during the term of this agreement."
5. During the 2015-2016 academic year Calvin attended the 9th grade at the Landmark School.
6. During the 2016-2017 academic year Calvin attended the 10th grade at the Landmark School. He was placed "on leave" for non-academic reasons by the Landmark School and completed the term with tutors and skype. Landmark School did not dismiss or terminate Calvin.
7. The Parties participated in a BSEA sponsored mediation on June 19, 2017. The record does not contain a written agreement resulting from that mediation. The Parties agree, however, that Norwood began the referral process for Calvin's placement in an approved, private special education school other than Landmark.
8. On June 20, 2017 the Parent withdrew Calvin from the Landmark School.
9. On August 14, 2017, the Parent informed Norwood of her intention to place Calvin at the Eagle Hill School, a non-approved private school, and to seek public funding for the placement.

10. The Team met on September 8, 2017. Thereafter, Norwood proposed an IEP calling for Calvin's placement at Norwood High School. The Parent rejected the proposed 2017-2018 IEP.

11. Calvin is attending the 11th grade as a residential student at the Eagle Hill School.

III. GOVERNING LAW

The statutory provision animating the Parties' dispute appears at 20. U.S.C. §1415 (e)(2)(F):

Written agreement. In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--

- (i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence
- (ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and
- (iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

See also: 34 CFR.300.506(7)

In particular the Parties focus on (iii) which gives courts jurisdiction to enforce agreements reached in a mediation, an integral procedural due process component of the IDEA's administrative dispute resolution system. A reauthorization of the IDEA echoed congressional intent by setting out a similar provision applicable to agreements reached in a resolution session. That provision, 20 U.S.C. §1415 (f)(1)(B)(iii), mirrors the statutory language pertaining to Mediation Agreements by specifically granting authority to enforce "written settlement agreements" arising out of mandatory resolution meetings to the courts.² These parallel provisions evince the intent of Congress to vest jurisdiction over disputed agreements in an IDEA context in the courts rather than in the IDEA's administrative hearing process.³ In this way the IDEA treats written agreements resulting from the IDEA's

²20 U.S.C. §1415(f)(1)(B)(iii) states:

Written settlement agreement. In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is--
(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and
(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

See also: 34 CFR 300.510 (d)(2)

³ While the IDEA permits states to create an alternate mechanism for addressing disputes arising out of mediation and resolution agreements Massachusetts has not done so. 34 CFR 300.537.

alternative dispute resolution procedures, mediation and resolution meetings, in the same manner as it does the “final agency decision” resulting from the more formal due process hearing. Once an agreement or decision is final, complaints about interpretation, implementation or error are committed to a court’s reviewing expertise.
20 U.S.C.§1415(i)(2); 34 CFR 30.516(d).

IV. POSITIONS OF THE PARTIES

a) School: Parties to an IDEA dispute are free to enter into enforceable agreements limiting their respective rights and obligations. When an agreement is reached in the context of an IDEA authorized mediation the plain language of the IDEA commits any dispute involving review of that agreement to a court, and not to the IDEA’s administrative hearing process. In this matter, the Parties disagree about the meaning and application of some terms used in the May 2015 Mediation Agreement, “dismiss” and “terminate” for example, as well as whether the agreement as a whole reflects the intentions of the parties when faced with circumstances not necessarily anticipated in the agreement.

These questions require the determination of facts, and the application of principles of contract law, beyond the expertise of IDEA hearing officers. Resolution of these questions by a court is precisely what is contemplated by, indeed required by, the plain language of 20 U.S.C.§1415(e)(2)(F).

b) Parent: Resolution of the Parent’s Hearing Request does not require consideration of the Parties’ 2015 Mediation Agreement. The School offered an IEP in September 2017 when Calvin was no longer attending Landmark. The Parent rejected the proposed 2017-2018 IEP and requests public funding for the unilateral placement at Eagle Hill. This is the type of dispute that is typically handled by the BSEA. It requires only a determination of the Student’s current special education needs and an evaluation of whether the proposed IEP is reasonably calculated to provide a free, appropriate public education to him. These determinations are indisputably within the BSEA’s jurisdiction.

V. DISCUSSION

The Parties specifically dispute the import, intention, application and plain meaning of several sections of a May 2015 Mediation Agreement covering the 2015-2019 school years. That Agreement was implemented without incident or complaint for two years. Now the Parent seeks to frame the issue here brought to the BSEA as a simple disagreement about a current proposed and rejected IEP. This starts, however from the mid point. Resolution of this matter requires an initial determination of whether the plain language of the 2015 Mediation Agreement, or the mutual intent of the parties when entering into it, fully anticipates and addresses the rights of the Parties in these circumstances. The very fact that the Parties disagree about whether the language of the Mediation Agreement covers this factual situation, whether the School has fully implemented the Mediation Agreement, whether that implementation fully discharges the School’s IDEA responsibilities, whether the section of the Mediation Agreement pertaining to discharge from the Landmark School is implicated here, and whether the Parties intended

to extinguish the Student's eligibility for FAPE through Norwood were he to discontinue enrollment at the Landmark School, necessarily requires resort to interpretation of the language of the Mediation Agreement and the application of principles of contract law. It is precisely this situation that Congress committed to the expertise of the courts.

The Parties acknowledge that the IDEA squarely addresses the role of courts in reviewing Mediation Agreements. 20 U.S.C. § 1415(e)(2)(F)(iii). Bypassing the elaborate due process hearing system the IDEA prescribes to handle other contested matters, the drafters succinctly gave courts exclusive jurisdiction to review Mediation and Resolution Agreements. When the law is this clear, an alternate meaning cannot be grafted on to it. Indeed the BSEA has addressed this issue in the past, finding that Parties seeking to be relieved of obligations set out in a Mediation or Resolution Agreement, whether the language is plain or ambiguous, must seek direction from a court. *Foxborough & Harold*, 16 MSER 214, 215 (2010); *Masconomet R.S.D.*; 16 MSER 408 (2010); *Lincoln-Sudbury R.S.D.*, 16 MSER 424, 428 (2010).⁴ There is no reason to depart from that approach here.

A reviewing court may find that the plain language of the Parties' 2015 Mediation Agreement relieves Norwood of further IDEA obligation to Calvin. On the other hand, it may find that, under the Mediation Agreement, Calvin retains procedural and/or substantive IDEA rights until he earns a diploma or turns 22. As Calvin is currently attending a school chosen by his parent, and neither party has raised the spectre of a student without an educational placement, there is little risk of prejudice to him in taking time to seek the court's assistance in resolving the Parties' disagreement before undertaking a potentially lengthy and expensive due process hearing. If this is found to be the wrong approach the hearing process is merely delayed; if right, the court will fully resolve the contested issues. On the other hand, were we to proceed to hearing and a later court review find that the BSEA lacked jurisdiction to consider or act in relation to the Mediation Agreement, the entire hearing process would have been for naught.

Considering the plain language of the governing statute: 20 U.S.C. § 1415(e)(2)(F), the precedential line of analysis and application of that statute by the BSEA, and the equities recited above, I find that the BSEA may not and should not assert jurisdiction of this dispute. As the current dispute cannot be resolved without resort to the Parties' 2015 Mediation Agreement the Parties must seek review in court before filing for a hearing at the BSEA. As the BSEA lacks jurisdiction of the subject matter of the Parent's Hearing Request, the School's Motion to Dismiss for failure to state a claim upon which relief can be granted is proper.

⁴For a review of BSEA Decisions explaining the BSEA's lack of jurisdiction over settlement agreements reached outside the IDEA's mediation and resolution processes see: *Wellesley Public Schools*, 23 MSER 191 (2017).

ORDER

The School's Motion to Dismiss is GRANTED without prejudice.

By the Hearing Officer

Lindsay Byrne
Dated: April 11, 2018