

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In Re: Hale¹

&

BSEA #1810148

Newton Public Schools

RULING ON MOTION FOR SUMMARY JUDGMENT

This matter comes before the Bureau of Special Education Appeals on the Motion of the Newton Public Schools for Summary Judgment. On May 10, 2018 the Parents filed a Hearing Request seeking reimbursement of expenses they incurred associated with the unilateral placement of their son, Hale, at the Community Therapeutic Day School between the beginning of September 2017 and the end of January 2018. On June 27, 2018 Newton filed Motion for Summary Judgment asserting that no factual dispute existed and claiming it was entitled to judgment in its favor under the controlling law. The Parents filed an Opposition on August 8, 2018 asserting that factual differences between the School's recitation of events and their own memories and documents exist. In particular, the Parents noted discrepancies in: the pertinent event timeline; the date, manner and content of required notices; and the appropriate completion of Newton's evaluation. The Parents pointed out that the proper identification of the applicable regulatory and statutory provisions cannot be determined until after the disputed facts are resolved. The Parents also advance certain equitable principles that may be relevant to selecting the proper course of action in this matter.

LEGAL FRAMEWORK

In Massachusetts, consideration of Motions for Summary Judgment in the context of a special education dispute arising under the IDEA or MGL c.71B is governed by 801 C.M.R. 1.01 7 (h) which provides:

When a Party is of the opinion there is no genuine issue of fact relating

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

to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense. If the motion is granted as the part of a claim or defense that is not dispositive of the case, further proceedings shall be held on the remaining issues.

The Massachusetts Administrative Rule essentially parallels the Massachusetts Rules of Civil Procedure (MRCP) and the Federal Rules of Civil Procedure (FRCP). MRCP and FRCP Rule 56 provide that summary judgment may be granted only if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show both that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. The party seeking summary judgment bears the burden of proving that there are no genuine issues of material fact on every relevant issue, *Patterson v. Time, Inc.* 404 Mass. 14, 17 (1989). Further, on a motion for summary judgment, all evidence and/or inferences are to be viewed in a light most favorable to the party opposing summary judgment. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 232, 252 (1986).

CONCLUSION

After careful consideration of the facts outlined in the Parties' briefs, and of the applicable legal principles, I find that Newton's Motion should be denied. The administrative appeals process under the IDEA and MGL. C. 71B favors a robust exchange of information. Dispositive Motions in advance of hearing are disfavored, particularly where, as here, the Parents are proceeding *pro se*. It is sufficient to defeat a Motion for Summary Judgment in this context to raise a contested fact, however tangential or implausible, which the Parents have here done. It is up to the Parties to put the proof to their version of events at hearing.

ORDER

Newton's Motion For Summary Judgment is DENIED.

By the Hearing Officer

Lindsay Byrne
Dated: August 23, 2018

