

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

In re: Freya<sup>1</sup>

BSEA: 1900628

**RULING ON BOURNE PUBLIC SCHOOLS' MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Hearing Officer on the *Motion for Summary Judgment* filed by the Bourne Public Schools (“Bourne” or “the District”) on August 24, 2018. Parents have filed no response. Neither party requested a hearing on the Motion, and as testimony or oral argument would not advance the Hearing Officer’s understanding of the issues involved, this Ruling is being issued without a hearing pursuant to Bureau of Special Education Appeals *Hearing Rule VII(D)*. For the reasons set forth below, Bourne’s *Motion for Summary Judgment* is GRANTED.

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On July 27, 2018, Parents, *pro se*, filed a *Hearing Request* against Bourne asserting that their daughter Freya’s Team had agreed on services for her at a meeting that occurred on May 11, 2018, but that because Parents had been late in returning the signed Individualized Education Program (IEP), it had been “cancelled.” As relief, they requested reinstatement of the IEP previously discussed, confirmed, and agreed to by the parties. The Hearing was scheduled for August 31, 2018. On August 2, 2018, the District notified the BSEA that it had not received Parents’ *Hearing Request* and requested a recalculated *Notice of Hearing*. Pursuant to Bourne’s request, the BSEA generated a recalculated *Notice*, under which the Hearing was scheduled for September 6, 2018 and the initial Conference Call for August 21, 2018. Parents failed to appear for the Conference Call. Pursuant to the District’s request, filed August 21, 2018, and in the absence of any response from Parents, the Hearing was postponed to September 21, 2018. On August 24, 2018, Bourne filed the instant *Motion for Summary Judgment*. Parents have filed no response.

**II. DISCUSSION**

**A. Legal Standard for Summary Judgment**

Pursuant to 801 C.M.R. 1.01(7)(h), Summary Decision may be granted where there is “no genuine issue of fact relating to all or part of a claim of defense and [the moving party] is entitled to prevail as a matter of law.” This rule of administrative practice is modeled after Rule 56-Summary Judgment- of both the Massachusetts and Federal Rules of Civil Procedure.<sup>2</sup> The party seeking summary judgment begins by demonstrating, with the support of its documents, that

<sup>1</sup>“Freya” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

<sup>2</sup>Federal Rule of Civil Procedure 56 authorizes the entry of summary judgment whenever it appears that “there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.”

there is no genuine issue relating to the claim or defense. This party bears the burden of proof, and all evidence and inferences must be viewed in the light most favorable to the party opposing summary judgment.<sup>3</sup>

In response to a motion for summary judgment, the adverse party “must set forth specific facts showing that there is a genuine issue for trial.”<sup>4</sup> To survive this motion and proceed to hearing, the adverse party must show that there is “sufficient evidence” in her favor that the fact finder could decide for her.<sup>5</sup> In so doing, she may not rely on the pleadings alone.<sup>6</sup> “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.”<sup>7</sup>

## B. Application of Legal Standards

In its *Motion for Summary Judgment*, Bourne asserts that no controversy exists for adjudication. As such, there is no genuine dispute of material fact and it is entitled to judgment as a matter of law. Specifically, according to the District, on May 10, 2018, a Team meeting was held for Freya, from which an IEP dated May 31, 2018 to May 30, 2019 was generated. The IEP, which proposed services on Grids B and C and placement in an inclusive early childhood program, was signed by Bourne staff on May 15, 2018 and sent to Parent. On or about July 1, 2018, Parent signed the IEP, accepting it and the placement page in full, and Bourne received these documents on July 17, 2018.<sup>8</sup> Bourne intends to implement this fully accepted IEP when Freya begins the school year at Bournedale Elementary School.

The signed IEP submitted by Bourne in support of its *Motion for Summary Judgment* demonstrates that the parties are in agreement as to services and placement for Freya. Even viewing all evidence and inferences in the light most favorable to Parents, I am unable to make out a dispute of material facts. Parents’ allegation that the District “cancelled” the IEP because it was not timely returned is contradicted by the evidence. To the extent the *Hearing Request* alleges that Bourne will not implement Freya’s IEP, such claim is both speculative and premature.<sup>9</sup>

## **CONCLUSION**

The District has established that Parents’ factual allegations, if true, fail to raise a right to relief above the speculative level, and that there is no genuine issue of material fact for hearing. Bourne is entitled to judgment as a matter of law.

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<sup>3</sup> *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 252 (1986).

<sup>4</sup> *Id.* at 250.

<sup>5</sup> *Id.* at 249.

<sup>6</sup> See *Correllas v. Viveiros*, 410 Mass. 314, 317 (1991).

<sup>7</sup> *Anderson*, 477 U.S. at 249-50.

<sup>8</sup> S-1.

<sup>9</sup> The Individualized Education Program (IEP) proposed for Freya for the period from May 31, 2018 to May 30, 2019, while she is in Pre-Kindergarten, does not include Extended School Year Services. As such, the District was not obligated to provide any services for Freya between July 17, 2018, when the signed IEP was returned, and the beginning of the 2018-2019 school year.

**ORDER**

Bourne's *Motion for Summary Judgment* is hereby ALLOWED. The Hearing scheduled for September 21, 2018 is cancelled, and the case is DISMISSED.

By the Hearing Officer:

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Amy M. Reichbach  
Dated: September 11, 2018