

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

In RE: Student v.
Montachusett Regional Vocational Technical School

BSEA # 1907993

Ruling on Montachusett Regional Vocational Technical School Motion to Dismiss

On March 6, 2019, Parent requested a Hearing in the above-referenced matter raising essentially the same issues and claims previously raised in BSEA #1904777, to wit: seeking access to Student’s records, alleging procedural violations pursuant to the Individuals with Disabilities Education Act (“IDEA”).¹ Specifically, Parent requests that Student’s “IEP records, school records, report cards, etc.” be provided to her immediately, to “allow an amended IEP meeting for this year,” that she be included in the Team meeting and that she be awarded any financial or other recourse for denial of her participation in Student’s education. In asserting her rights to access Student’s records under the Family Educational Rights and Privacy Act (FERPA), Parent places her reliance on her submissions in BSEA #1904777 (including her exhibit binder). Lastly, Parent asserts that the previous Hearing Officer “did not make proper rulings and did not address this matter”.²

On March 12, 2019, Montachusett Regional Vocational Technical School (“Montachusett”) filed a Motion to Dismiss, stating that the instant Hearing Request did not “raise any new allegations or any change in circumstances” warranting a new Hearing. In its Motion, Montachusett further notes that Student turned 18 years of age in early January 2019 and opted to retain decision-making authority when reaching the legal age of consent pursuant to the IDEA, and that a Protective Order has been issued prohibiting contact between Parent and Student unless Student initiates said contact.

During a telephone conference call on March 25, 2019, Parent was granted an extension of time to file her response to Montachusett’s Motion to Dismiss. Parent’s Motion in Objection to Dismissal (Parent’s Objection) was received on March 28, 2019. In her response, Parent states that Student’s age of majority is irrelevant for purposes of FERPA because she still claims Student as a dependent for tax purposes, and asserts that the previous Hearing Officer erred in her rulings and should have offered Parent an opportunity to proceed to Hearing. Parent also argued that the BSEA lacked authority to enforce parental rights to records and further noted that she was not requesting “award of financial damages” through the BSEA but rather “that a potential lawsuit to be filed to claim money damages due to continued

¹ See *Ruling on School’s Amended Motion To Dismiss, Construed as an Amended Motion for Summary Judgment*, BSEA #190477 (Berman 1/28/2019) and *Ruling On Motion For Reconsideration on Amended Motion To Dismiss, Construed As Amended Motion For Summary Judgment*, BSEA #1904777 (Berman, 1/30/2019)(denying reconsideration of the January 29, 2019 Ruling granting summary judgment to Montachusett).

² Parent’s statement is presumed to refer to FERPA.

violations of parental rights is being considered.” As such, Parent asserts that her Hearing Request should not be dismissed.

After consideration of the Parties’ arguments, the Hearing Request in the instant case, and taking administrative notice of BSEA #1904777, Montachusett’s Motion to Dismiss is **GRANTED** as explained below.

Facts:

The facts delineated below are presumed to be true for the purposes of this Ruling only:

1. Student is an eighteen year-old who attends Montachusett. Student is an IDEA eligible student receiving special education services pursuant to an IEP. His eligibility and IEP are not in dispute for purposes of this Ruling.
2. Pursuant to the IDEA and Massachusetts special education law and regulations, parental rights transfer to students when they reach the age of majority (18 years) and the student then becomes responsible to make all decisions regarding educational services unless a legal guardian or conservator is appointed, or the student chooses to share or relinquish educational decision-making authority to a parent.
3. Upon reaching the age of majority in January 2019, for purposes of the IDEA, Student chose to retain educational decision-making authority for himself.
4. Student’s parents are divorced and the divorce decree granted sole legal and physical custody of Student to Father. At the time of the divorce, and pursuant to a decree dated August 16, 2016, which became absolute on November 15, 2016, Mother (the moving party in the instant case) was granted the right to “confer” with educational providers and receive documentation from such providers, and Father was ordered to keep Mother informed of educational issues. (Administrative notice of BSEA #1904777)
5. Following issuance of the divorce decree, on September 12, 2017, Father sought and was granted by the Gardner District Court an “Abuse Prevention Order” against Mother on behalf of Student. This Order prohibits Mother from contacting Student unless he initiates the contact with her.³ The Order also requires Mother to “stay away” from the school district. The original Order was dated September 6, 2017, and it has been extended several times thereafter. The most recent extension was granted on October 29, 2018 and remains in effect through October 24, 2019. (Administrative notice of BSEA #1904777)

³ Mother “may speak with son by phone if contact is initiated by [Student]”. (Administrative notice of BSEA #1904777)

6. M.G.L. c. 71, sec. 34H addresses the rights of non-custodial parents regarding access to student record information, generally granting them the ability to access their child's record if they are "eligible". Access to information by an eligible parent is prevented if one of the following occurs:

- 1) the Parent's access to the child is currently prohibited by a temporary or permanent protective order, except where the protective order, or any subsequent order which modifies the protective order, specifically allows access to the information described in this section; or,

- 2) the parent is denied visitation or, based on a threat to the safety of the child, is currently denied legal custody of the child or is currently ordered to supervised visitation, and the threat is specifically noted in the order pertaining to custody or supervised visitation.

7. FERPA regulations provide that

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes their rights. 34 CFR Part 99.4.

8. The IDEA incorporates elements of FERPA, including transfer of rights at the age of majority (18). 34 CFR 300.625(c) provides that

An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation and divorce. 34 CFR 300.613(c).

9. Prior to filing the instant Hearing Request, Parent filed a complaint with the Massachusetts Department of Elementary and Secondary Education (DESE) Problem Resolution Office (PRS) because of her inability to access Student's records. DESE upheld the school's decision to withhold Student's records based on state law, and found that the District's decision not to allow Parent's attendance at the Team meeting did not violate the law. (Administrative notice of BSEA #1904777)

10. On December 4, 2018, Parent requested a hearing with the BSEA. See BSEA #1904777. In BSEA #1904777 Parent sought an order directing the school

...to comply with [the] divorce judgment and forward immediately [Student's] IEP records, school records, report cards, etc. and allow an amended IEP meeting for this year for failure to notify me and include me in the IEP meeting because they retaliated against me for filing a complaint with the Department of Education and any recourse financial and otherwise for not allowing my participation in [Student's] education.

11. In BSEA #1904777, Montachusett denied any wrongdoing, asserting that, by law

[Mother] was not entitled to the records and not entitled to participate in the Team meeting. Further, as a non-custodial parent whose legal rights regarding any decision making with [Student's] education are limited by the divorce judgment of the probate and family court, [Mother] lacks standing to bring forth this complaint to the BSEA. As such, [Montachusett] is requesting that the BSEA dismiss this matter as there is no jurisdiction over the claims made by [Mother] and the DESE PRS office has already investigated and closed this matter.

12. A dispositive *Ruling on the School's Amended Motion to Dismiss, Construed As An Amended Motion for Summary Judgment* was issued on January 28, 2019 granting summary judgment in favor of Montachusett. Thereafter, the Hearing Officer Denied Parent's request for reconsideration on January 30, 2019.⁴

13. In her Hearing Request in BSEA #1907993, Parent requests immediate release to her of Student's "IEP records, school records, report cards, etc. She also requests to be "allow[ed] an amended IEP meeting for this year", and that she be included in the Team meeting and be provided any financial or other recourse for having been denied participation in Student's education. In asserting her rights to access Student's records under FERPA, Parent places her reliance on her submissions in BSEA # 1904777 (including her exhibits binder). Lastly, Parent asserts that the previous Hearing Officer "did not make proper rulings and did not address this matter⁵."

Legal Framework and Discussion:

Consistent with the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3), and Rule 17B of the BSEA *Hearing Rules for Special Education Appeals* the BSEA has jurisdiction to allow a motion to dismiss for failure to state a claim upon which

⁴ Prior to this dispositive Ruling, on January 11, 2019, the Hearing Officer had denied Montachusett's Motion for Summary Judgment, citing disputes of facts between the Parties. In the instant case Parent relies on this Ruling to support her position. However, the dispositive Ruling issued by the Hearing Officer on January 28, 2019, supersedes the previous January 2019 Ruling.

⁵ Parent's statement is presumed to refer to FERPA.

relief may be granted. These provisions are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

As previously discussed in a *Ruling on Ludlow Public Schools' Partial Motion to Dismiss* issued in *In Re: Student v. Ludlow Public Schools*, BSEA # 15-09319 (9/08/2015),

For a claim to survive a motion to dismiss, the factual allegations must plausibly suggest an entitlement to relief. *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v Twombly*, 550 U.S. 544, 557 (2007)). In evaluating the complaint, the Hearing Officer must take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff’s favor.” *Blank v. Chelmsford Ob/GYN, P.C.*, 420 Mass. 404, 407 (1995). These “[f]actual allegations must be enough to raise a right to relief above the speculative level...[based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact)...” *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). The Hearing Officer will consider the facts alleged in the pleadings and documents attached or incorporated by reference. *Nollet v. Justices of the Trial Court of Mass.*, 83 F. Supp. 2d 204, 208 (D.Mass. 2000), *aff’d*, 248 F.3d 1127 (1st Cir. 2000).

Only if the Hearing Officer cannot grant relief under federal or state special education law (20 U.S.C. § 1400 et. Seq. or M.G.L. 71B), or Section 504 (29 U.S.C. § 479), may the case be dismissed. See *Calderon-Ortiz v. LaBoy Alverado*, 300 F.3d 60 (1st Cir. 2002); *Whitinsville Plaza Inc. v. Kotseas*, 378 Mass. 85, 89 (1979); *Nader v. Cintron*, 372 Mass. 96, 98 (1977); *Norfolk County Agricultural School*, 45 IDELR, 26 (December 28, 2005). Conversely, if the opposing party’s allegations raise the plausibility of a viable claim that may give rise to some form of relief under special education law (20 U.S.C. § 1400 et. Seq. or M.G.L. 71B), or Section 504 (29 U.S.C. § 479), the matter may not be dismissed. See *Ashcorft v. Iqubal*, 129 S. Ct. 1937, 1948 (2009).

In the instant case Parent seeks a *de novo* opportunity to be heard due to dissatisfaction with the Hearing Officer’s rulings and determinations in BSEA #1904777, including issues involving participation in IEP meetings, Student’s education and access to Student’s records.⁶

⁶ The issue of access to Student’s records was raised in BSEA #1904777. In that case Montachusett argued that Massachusetts and federal law prohibited access to records by a non-eligible, non-custodial parent consistent with M.G.L. c.71 §34H due to the outstanding abuse prevention order, custody orders in Parents’ divorce decree and the determination entered by DESE’s PRS. Montachusett further argued that IDEA regulations at 34 CFR 300.610 et seq. offered protections similar to FERPA regarding a student’s confidentiality and access to student records. This issue was addressed by the previous Hearing Officer in BSEA #1904777 and therefore, is subject to *res-judicata* and

To the extent that Parent seeks review and/ or an opportunity to be heard on essentially the same issues and claims brought under BSEA #1904777, Parent's request must be denied under principles of *res judicata*⁷ and collateral estoppel.⁸ See *Allen v. McCurry*, 449 US 90 at 94 (1980); *Carpenter v. Carpenter*, 73 Mass. App. Ct 732 at 738 (2009); *In Re: Harwich Public Schools and Marshall*, 14 MSER 23 (2008); *In Re: Sutton Public Schools and Neville*, 13 MSER 352 (2007).

As explained in the *Ruling on Taunton Public Schools' Motion to Dismiss, Student v. Taunton Public Schools*, BSEA #1601127 (10/27/2015),

The doctrine of *res judicata* bars relitigation of issues that were or reasonably could or should have been litigated in prior actions between the same parties and were the subject of a final, conclusive decision. If the issue a party seeks to resolve in one formal adjudicatory process arises out of a "common nucleus of operative facts" considered and decided in a prior action, that issue is barred even if it were not formally presented in the prior action. *Sutton* citing *Apparel Art Int'l., Inc. v. Amertex Enterprises, LTD.*, 48 F3d 576 (1st Cir. 1995); *Carlette v. Carlette Bros. Foundry Inc.*, 793 N.E. 2d 1268 (Mass.App.Ct. 2003). For the purpose of application of issue preclusion doctrines, consideration and resolution by an administrative adjudicatory agency is equivalent to a court judgment. "[A] final order of an administrative agency in an adjudicatory proceeding...precludes relitigation of the same issues between the same parties, just as would a final judgment of a court of competent jurisdiction." *Sutton* citing *Korbin v. Bd. Of Registration in Medicine*, 444 Mass. 837, 844 (2005).

In essence, *res judicata* bars actions where the following three elements are present:

- 1) a final judgment on the merits in an earlier case;
 - 2) "sufficient identity" between the causes of action asserted in the earlier and later cases; and,
 - 2) "sufficient identity" between the parties in the two suits.
- Harwich* citing *Gonzalez-Pina v. Rodriguez*, 407 F.3d 425, 429 (1st Cir. 2005).

It is clear that BSEA #1904777 and BSEA #1907993 involve the same parties. BSEA #1907993 raises the same causes of action previously raised in BSEA #1904777. The earlier case, BSEA #1904777, was disposed of via a final Ruling issued on January 28, 2019. Attached to this Ruling was a Notice that this was a final agency determination and information regarding Parent's rights of appeal.

collateral estoppel principles.

⁷ Also known as claim preclusion.

⁸ Also known as issue preclusion.

Similarly, collateral estoppel precludes relitigation between the same parties of issues of fact or law necessary to a judgment which issues and claims have already been subject to a determination. *Allen v. McCurry*, 449 US at 94 (1980).

As noted earlier, it is clear that in the instant case Parent seeks a “re-do” of her previous case. Principles of *res judicata* and collateral estoppel prevent this Hearing Officer from essentially re-opening a case already dismissed by another Hearing Officer. Having exhausted administrative relief on the issues and claims raised, Parent’s remaining recourse is to appeal to federal district or state court within 90 days of the date of the previous Hearing Officer’s determination (that is, 90 days from January 28, 2019).

Next, I address Montachusett’s claim of transfer of rights at the age of majority.

The IDEA and Massachusetts special education law and regulations, transfer parental rights of eligible students to the student when the student reaches the age of majority, which in Massachusetts is age 18. Massachusetts’ special education regulations specifically state that

When a student reaches 18 years of age, he or she shall have the right to make all decisions in relation to special education programs and services. 603 CMR 28.07(5)⁹; see also 34 CFR 300.520.

Montachusett is correct that since his birthday in January 2019, Student prospectively controls who may or not attend Team meetings on his behalf, as he retained decision-making power upon turning 18 years old, has not been found to be incompetent, and is not under guardianship. Student has neither agreed to share decision-making power with Parent nor voluntarily delegated said responsibility to Parent, as he chose to retain all decision-making power upon turning 18 years old. 603 CMR 29.07(5)(b) and (c). Therefore, determinations as to who may attend Team meetings (among all other rights) rest with Student.

Furthermore, consistent with the 603 CMR 29.07(5) and Rule I(A) of the *Hearing Rules for Special Education Appeals*, only Student has standing to request a hearing before the BSEA on prospective issues. Rule I(A) of the *Hearing Rules for Special Education Appeals* which delineates who may request a Hearing before the BSEA, makes it clear that standing on any issue arising post reaching the age of majority rests solely with Student (including issues regarding FERPA), unless Student specifically chooses to share or delegate said power, which he has not done in the instant case.¹⁰

Having evaluated Parent’s Hearing Request, and taking as true the allegations therein, and drawing all inferences in Parent’s favor, it is clear that Parent has no right to relief based on

⁹ Except as provided in 603 CMR 28.07(5)(a) through (c) none of which are applicable in the instant case.

¹⁰ In her Hearing Request and Opposition to the Motion to Dismiss Parent mentions her desire to seek damages at a later time and in a different forum. Parent’s position in this regard is unclear but she is clear that she is not asserting this claim as part of the instant Hearing Request and as such, this claim is not before me. Generally, Montachusett is correct that monetary damages are not permitted under the IDEA. *Diaz-Fonseca v. Commonwealth of Puerto Rico*, 45 IDELR 268 (1st Cir.2006).

principles of *res judicata* and collateral estoppel, and further because by operation of law all future determinations (regarding e.g., convening of Team meetings, participation therein) rest solely with Student and Montachusett. Parent has failed to state a claim upon which relief may be granted and therefore, Montachusett's Motion to Dismiss is **ALLOWED**.

ORDER:

1. Montachusett's Motion to Dismiss is **ALLOWED**. Case **DISMISSED WITH PREJUDICE**.

By the Hearing Officer,

Rosa I. Figueroa

Dated: April 17, 2019