

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

In re: Student v.
Brookline Public Schools

BSEA #1912553

RULING ON BROOKLINE PUBLIC SCHOOLS' PARTIAL MOTION TO DISMISS

On July 12, 2019, Brookline Public Schools (Brookline) filed a Partial Motion to Dismiss (*Motion*) the Hearing Request filed by Parents, asserting that it has adhered to a Settlement Agreement and provided Student the agreed upon medical and educationally necessary Assistive Technology (AT), funded an AT evaluation performed by Jennifer Buxton, has funded the AT consultation and services per the IEP, and has provided the AT equipment identified in Student's 9/01/2016 N1 to the private school. According to Brookline, Parents are now seeking AT services and equipment which exceed those agreed to under the Settlement Agreement. Furthermore, Brookline argues that the Settlement Agreement did not require consultation between Ms. Buxton and Brookline, it only required that Ms. Buxton provide progress statements.

Brookline further sought dismissal of some of Parents' claims alleging that it was not obligated to meet with Parents to discuss additional AT services/ issues regarding its administratively issued IEPs, noting that Parents waived those rights in the 2016 Settlement Agreement.¹

On July 16, 2019, Parents filed a Response opposing Brookline's *Motion* arguing that Brookline had failed to abide by the terms of the agreement and that the agreement, read together with the administrative IEPs, entitled Parents to the remedy sought by them. Parents assert that they seek implementation of the Agreement as originally intended, asserting that Brookline must be held accountable to fulfill "the spirit and intent of the agreement". According to Parents, Brookline's contractual breach has resulted in a denial of FAPE to Student.

Legal Standards:

A. Motion to Dismiss:

¹ The 2016 Settlement Agreement stated: "The Parents waive all obligations Brookline has or may have under the IDEA and/or MGL 71B and the related regulations, to convene a Team and to develop IEPs for each of the student's school years during the full term of the Agreement. Brookline shall develop administrative IEPs for each school year."

Pursuant to the *Standard Adjudicatory Rules of Practice and Procedure*, 801 CMR 1.01(7)(g)(3) and Rule XVII A and B of the *BSEA Hearing Rules for Special Education Appeals*, a hearing officer may allow a motion to dismiss if the party requesting the hearing fails to state a claim upon which relief can be granted. This rule is analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure and as such hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim. Specifically, what is required to survive a motion to dismiss “are factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”² 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.”³ 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). . .”⁴

B. Settlement Agreements:

Careful reading of the IDEA reveals that Congress intended to provide parties opportunities to resolve their disputes through settlement agreements in addition to through the due process hearing. Where parties in a BSEA proceeding have negotiated and, with informed consent, voluntarily entered into a settlement agreement, the terms of said agreement bind the parties. If the parties later access the BSEA and raise questions regarding their previous agreement, the settlement agreement must be carefully reviewed to ascertain the rights and responsibilities of the parties pursuant said settlement agreement.

Various BSEA Rulings have explained that when “the parties’ settlement agreement relates to rights and responsibilities that fall within the purview of the BSEA (which are defined within the IDEA as the ‘identification, evaluation, or educational placement of the child, or provision of a free appropriate public education to such a child’ (20 USC 1415(b)(6)(A))” the BSEA has authority to review and enter adjudications taking into account the terms of the parties’ agreement. See *In Re: Longmeadow Public Schools, Ruling on Longmeadow’s Motion to Dismiss*, 14 MSER 154 (2009); *In Re: Marlborough Public Schools*, BSEA # 11-3650 (2011); *In Re: Norwood Public Schools*, 11 MSER 161 (2005). Where the language in a settlement agreement is clear and unambiguous, and sets forth with specificity their rights and obligations, that language binds the parties. As stated by Hearing Officer Crane in *Longmeadow*,

...it would undermine the integrity and efficacy of the settlement process if either party were allowed to avoid their obligations under the agreement, proceed to an evidentiary hearing before the BSEA, and have the BSEA issue a decision on the merits.

Settlement agreements must be given appropriate effect even in circumstances when the parties waive certain rights. See *South Kingstown School Committee v. Joanna S.*, 773 F.3d

² *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

³ *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995).

⁴ *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted).

344, 352, 355 (1st Cir. 2014). In *South Kingstown School Committee*, the First Circuit Court noted that settlement agreements can relieve a party of performing certain obligations when the parties have expressly waived such obligations in their agreement. The Court noted that

It would be meaningless if [the party] could nonetheless turn around the next day and demand the foregone [terms] anew. We cannot accept [this] reading of the Agreement, as we find it difficult to suppose the parties intended such a meaningless outcome of their negotiation. *AccuSoft Corp. v. Palo*, 237 F.3d 31, 40 (1st Cir. 2001).

Therefore, when parties to a BSEA hearing choose to enter into a settlement agreement, their agreement must be given full effect and the terms of the agreement may thus limit the relief available to the parties through the BSEA.

Discussion:

In the case at bar, Brookline seeks dismissal of some of Parents' claims, relying on the terms of a 2016 Settlement Agreement between the parties. In making this argument Brookline relies on previous BSEA Rulings and Decisions, correctly arguing that BSEA Hearing Officers are authorized to dismiss a case, or portions of a case, based on the unequivocal language set forth in a settlement agreement previously entered into by the parties. See *In Re: Lynn Public Schools*, BSEA 1500643 (2015); *In Re: Marlborough Public Schools*, BSEA # 11-3650 (2011).

Parents do not dispute the existence or validity of the 2016 Settlement Agreement, but rather, argue that the terms of the agreement support their position and validate their Hearing Request. Relying on the language of the Settlement Agreement, read in conjunction with Student's IEP, Parents argue that Brookline has failed to comply with the terms of the agreement thereby entitling Parents to the requested relief.

In order to survive a Motion to Dismiss, Parents' Hearing Request need only assert "factual allegations *plausibly* suggesting...an entitlement to relief." [Emphasis supplied].

Taking Parents' allegations as true, as is required in the context of a Motion to Dismiss, I find that Parents' pleadings articulate a sufficient basis to plausibly suggest a cause of action entitling them to some form of relief. Therefore, without a full Hearing on the merits, this matter cannot be dismissed. Brookline's Motion to Dismiss is hereby **DENIED**.

ORDERS:

1. Brookline's Motion to Dismiss is **DENIED**.
2. By agreement of the Parties during the Pre-hearing Conference on July 25, 2019, this matter will proceed as a Pre-hearing Conference on September 20, 2019 at 10:00 a.m. at the Offices of DALA/BSEA, 14 Summer St., fourth floor, Malden, MA. The Hearing in this matter remains scheduled to proceed on October 16 and 17, 2019 consistent with the Order issued on July 15, 2019.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: July 29, 2019