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

In re: Jake¹       BSEA #11-2194

RULING ON SCHOOL’S MOTION TO DISMISS PARENTS’ APPEAL

BACKGROUND

On September 23, 2010 Parents filed a hearing request with the BSEA. Parents have rejected the Individual Education Plan (IEP) proposed by the Masconomet Regional School District (MRSD) for Jake for the 2010-2011 school year. On October 4, 2010 MRSD filed its response to Parents’ hearing request. The hearing request and response thereto made it clear that a potentially outcome-determinative threshold issue exists that needs to be resolved before/if the hearing can proceed. During an October 14, 2010 pre-hearing conference call, it was established that MRSD would file a Motion to Dismiss this Appeal (MTD); Parents would file their Opposition to MRSD’s MTD (Opposition); and a ruling on the MTD would issue. The parties also agreed to waive oral arguments on the MTD and Opposition thereto. On November 1, 2010 MRSD filed its MTD. On November 5, 2010 Parents filed their Opposition to MRSD’s MTD.

HISTORY/STATEMENT OF THE CASE

Jake is fourteen years old. He began receiving special education at age 3 from the Topsfield Public Schools (TPS) and remained in TPS through grade 2. Jake attended Landmark School (LMS) for the 3rd grade (2004-2005) via a settlement agreement. TPS then placed/funded Jake at LMS for the next three years (4th, 5th & 6th grades). TPS is a K-6 district and a member of MRSD. During the summer of 2008 Parents and MRSD entered into a mediation agreement under which MRSD agreed to fund Jake’s continued placement at/transportation to/from LMS for the 2008-2009 and 2009-2010 school years (7th and 8th grade). Under this mediation agreement Parents waived Jake’s “stay put” rights to LMS and agreed to a placement at MRSD for Jake’s 2010-2011 school year.

Parents rejected MRSD’s proposed IEP for Jake for the 2010-2011 school year and unilaterally placed Jake at LMS for the 2010-2011 school year. They now request through this hearing that the BSEA order MRSD to fund their unilateral placement of Jake at LMS for the 2010-2011 school year.

¹ Jake is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in publicly available documents.
STATEMENT OF POSITIONS

Parents’ position is that MRSD’s proposed IEP for Jake for the 2010-2011 school year does not provide him with a free and appropriate public education (FAPE). Thus, Parents contend, they are not bound to an agreement that would serve to defeat FAPE. Parents state that MRSD is not relieved of its obligations to ensure Jake FAPE regardless of the content of the mediated agreement. Parents contend that neither Parents nor MRSD has the right to waive Jake’s FAPE entitlement—therefore Parents cannot accept the proposed placement at MRSD despite the terms of the mediated agreement. Finally, Parents contend that mediated agreements cannot take precedence over Jake’s legal entitlement to FAPE.

MRSD’s position is that at the July 25, 2008 mediation the parties entered into a legally binding mediation agreement whereby MRSD agreed to provide one hundred percent of the funding for Jake’s placement at LMS as well as daily, round trip transportation for the 2008-2009 and 2009-2010 school years. In consideration of MRSD’s actions, Parents waived stay put at LMS for Jake for the 2010-2011 school year and agreed to a prospective placement for Jake at Masconomet Regional High School for the 2010-2011 school year. Consequently, MRSD contends that it is not responsible for providing any funding for Parents’ unilateral placement of Jake at LMS for the 2010-2011 school year. MRSD states that Parents do not assert that MRSD has, in any way, failed to comply with the terms of the mediated agreement. MRSD further states that it has fully complied with the mediated agreement and, in performance thereof, has incurred LMS tuition and transportation expenses for Jake over the last two years in excess of $83,000. MRSD argues that the terms of the mediation agreement preclude Parents from obtaining public funding from MRSD for their unilateral placement of Jake at LMS for the 2010-2011 school year.

RULING

Based upon the written legal arguments and written documentation submitted and a review of the applicable law, MRSD’s Motion To Dismiss Parents’ Appeal is GRANTED and BSEA# 11-2194 is DISMISSED WITH PREJUDICE.

My analysis follows.

On July 25, 2008 Parents and MRSD participated in a mediation with a trained, highly experienced BSEA mediator. Both Parents attended and were represented by an experienced advocate. MRSD was unrepresented. The terms of the Agreement Reached Through Mediation are set out, in their entirety, below:

Masconomet Regional School District agrees to:

1) Placement at Landmark School for SY 2008-2009 and for 2009-2010;

2) Transportation to/from school/home.
Parent agrees to:

1) Waive [Jake’s] stay put rights to placement at Landmark at the end of the 2009-2010 SY; meaning that they agree to placement at a Masconomet program beginning with the 2010-2011 SY; Emphasis added.

2) Waive Masconomet funded summer services for the summer of 2009.

This Agreement Reached Through Mediation was signed by both Parents and by the then Director of Special Education for MRSD. Beneath the signatures is the following paragraph:

This agreement has been reached through discussion of this student’s educational plan and program. All discussions that occurred during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The concerns of both school personnel and parent(s) have been voiced and the parties whose signatures appear above make the above agreement in good faith. Emphasis added.

Nowhere in their written documentation or written legal argument do Parents assert that the mediated agreement is, in any way, open to interpretation. Indeed, I find the mediated agreement to be crystal clear and totally unambiguous.

Parents and MSRD voluntarily and knowingly entered into an enforceable, contractual mediated agreement. A true quid pro quo was achieved for the benefit of both parties. Parents gained the certainty of Jake’s placement of LMS plus transportation to/from LMS for two full school years totally funded by MRSD. Parents gained these two full years of public funding of Jake’s attendance at LMS without the expense, time and emotional turmoil of having to participate in a full evidentiary hearing before the BSEA, with the possibility of not prevailing at all or of only partially prevailing. In fact, if Parents had gone to hearing during the summer of 2008 and prevailed, they would have achieved only one school year (2008-2009) at LMS. The 2009-2010 school year could well have resulted in a second BSEA hearing with Parents again having to prove their case on the merits in order to prevail, again facing the possibility of not winning a LMS placement. In consideration of MRSD’s funding two full school years at LMS without any BSEA hearings, Parents agreed to waive any stay-put (placement pending appeal) rights at LMS and agreed to accept a placement at MRSD for Jake for the 2010-2011 school year. In addition, MRSD benefitted by: saving the expense, time and emotional turmoil of having to participate in one or possibly two BSEA hearings (with the possibility of not prevailing or only partially prevailing); gaining the certainty that its public funding of Jake at LMS would end at the conclusion of the 2009-2010 school year; and confirming that Jake would attend a placement at MRSD for the 2010-2011 school year. In consideration of Parents’ agreement to place Jake at MRSD for the 2010-2011 school year, MRSD funded two school years at LMS plus all transportation.
Both federal and Massachusetts special education law provide for mediation. (See 20 U.S.C. §1415(e); 34 CFR §300. 506; 603 CMR 28.08(4). Both 20 U.S.C. §1415(e)(2)(F)(ii) and (iii) and 34 CFR §300.506 (b)(6)(ii) and (7) provide that if parties reach resolution at mediation that they shall execute a legally binding agreement that sets forth their resolution; is signed by both the parent and a representative of the agency who has the authority to bind such agency; and that such written and signed mediation agreement is legally enforceable in a state court of competent jurisdiction or in a district court of the United States. Emphasis added. Similarly, federal statute and regulation 20 U.S.C. §1415 (f)(1)(B) and 34 CFR 300.510(c)(1) and (2) provide for resolution sessions and agreements, with the same criteria: that the parties shall execute a legally binding agreement; that is signed by both the Parent and a representative of the agency who has the power to bind such agency; and which agreement is enforceable in state or federal court.

Based upon the provisions for both mediation agreements and resolution session agreements, I conclude that the thrust of both federal and state special education statutes and regulations is to promote settlements, whenever possible, without the necessity of proceeding to a full due process hearing. Further, the above cited statutory and regulatory provisions clearly establish that Parents have the authority to enter into a binding, legally enforceable, mediation or resolution/settlement agreement on behalf of their child and be legally bound by it terms. If parents were not legally bound by a mediation or resolution/settlement agreement that they voluntarily entered into and derived the full benefits of, query whether any school district would ever into an any type of agreement with parents. The intent of the statutory and regulatory provisions with respect to mediation and resolution agreements would be effectively subverted.

Because the parties’ Mediation Agreement explicitly relates to rights and responsibilities that fall within the preview of the BSEA (defined within the Individuals With Disabilities Education Act as the “identification, evaluation or educational placement of the child or the provision of a free and appropriate public education to such child”), pursuant to 20 U.S.C 1415(b)(6)(A), a BSEA Hearing Officer has the authority and responsibility to consider the Mediation Agreement and determine whether and to what extent the agreement alters the rights and responsibilities of the parties with regard to Jake’s special education services and related procedural protections. (See 14 MSER 249 – BSEA# 07-2866 – In re Longmeadow Public Schools (2008); see also 14 MSER 382 – BSEA# 09-2526 – Wachusett Regional School District (2008). As the Hearing Officers ruled in the above cited BSEA cases:

Federal case law makes clear\(^2\) that I have the authority and responsibility to consider the parties’ settlement agreement in the instant dispute. In general the BSEA has a substantial interest in considering the legal implications of a settlement agreement that purports to resolve a dispute before the BSEA. If an agreement is binding upon the parties and settles all claims, it would undermine

\(^2\) See 14 MSER 249, 250-251 footnote #9 for detailed summary of numerous cases considering settlement agreements.
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. 14 MSER 249, 250-251 (2008); 14 MSER 382, 385 (2008)

This is precisely the situation in the case before me.³

I conclude that the parties entered into a binding, legally enforceable mediation agreement on their July 28, 2008, which precludes Parents from litigating the claims in their Hearing Request currently before the BSEA. To allow this case to proceed to hearing would be contrary to public policy, a violation of fundamental contract law, and completely inconsistent with the IDEA’s statutory and regulatory provisions regarding resolution of disputes.

ORDER

I. MRSD’s Motion To Dismiss Parents’ Appeal is GRANTED.

II. BSEA # 11-2194 is DIMISSED WITH PREJUDICE.

By the Hearing Officer

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Raymond Oliver       Dated: November 15, 2010

³ The agreement considered by the Hearing Officers in Wachusett and Longmeadow were “Settlement Agreements” executed pursuant to the IDEA’s “resolution session process.” However, because the IDEA specifically contemplates the resolution of disputes not only during resolution sessions, but also through the IDEA’s mediation process, the MRSDs reasoning and argument in this case is analogous to the rationale in Wachusett and Longmeadow.