On January 5, 2011, Marlborough Public Schools (Marlborough) filed a Partial Motion to Dismiss in the above-referenced matter. In its Motion, Marlborough states that in January 2010 the Parties executed a settlement agreement which contained explicit language specifically stating that the agreement disposed of all claims through the date of the agreement. However, Parents Request for Hearing dated December 17, 2010 sought to raise claims preceding the January 2010 agreement. Marlborough asserts that the claims preceding the agreement are improperly before the BSEA and as such those portions of Parents’ hearing request should be dismissed with prejudice.

Parents filed an Opposition to said motion on January 13, 2011, asserting that Parents sought more than simply the placement of their choice when they entered into the settlement agreement, and even when Marlborough agreed to fund this placement it were not released from their responsibility to provide Student a Free Appropriate Public Education (FAPE). Parents state that the portion of the claim preceding the agreement in January 2010 should be heard because there are questions of material fact regarding the intent, expectation, and understanding of the parties regarding the agreement of 2010. Additionally, (a) there is a question of possible misrepresentation by third parties upon which Parents relied to their detriment, and/or mutual mistake, and/or (b) a partial or total failure of consideration, resulting in a breach of contract by Marlborough for not assuring Student provision of a FAPE prior to or in the private placement selected by Parents. According to Parents, since Marlborough agreed to fund an appropriate placement and Learning Prep School turned out not to be appropriate, Student is entitled to have all of his claims heard, including those arising prior to the settlement agreement.

**FACTS:**

Parents filed a request for hearing in 2009 (BSEA # 10-3164) challenging the appropriateness of Student’s program and placement in Marlborough for the period covering 2008-2009 and 2009-2010, and seeking public funding for Student’s private placement at Learning Prep School (SE-1). Parents were represented by counsel at the time. Thereafter, the Parties entered into a settlement agreement on January 22, 2010 as a result of which Student’s placement at Learning Prep was publicly funded. The
agreement encompassed Student’s educational placement for the 2009-2010, 2010-2011 and 2011-2012 school years, and the summers of 2010 and 2011, with stay-put placement at Learning Prep School should a dispute arise between the Parties, and an early termination of enrollment provision. An IEP was drafted as a result of the agreement and accepted by Parents within the time allotted under the settlement agreement.

The settlement agreement further contained a clause stating:

This agreement is intended to and does settle any and all disputes which exist or may exist between the parties relating to [Student’s] regular and special education and related services since he became a student at Marlborough, through the date of this agreement. The Parents and [Student] remise, release, and forever discharge all existing debts, demands, actions, claims of any kind, nature, and description both in law and in equity which the Parents or [Student] have or might have, whether known or unknown, against Marlborough or its agents arising out of [Student’s] enrollment in or attendance at Marlborough through the date of this agreement, except as may be necessary to enforce the terms of this agreement. Without limiting the foregoing generalities, the Parents and [Student] specifically acknowledge that they are waiving any rights against Marlborough which might have accrued to them or [Student] under M.G.L. c. 30A, 71, 71B, 76, 20 U.S.C. §1400 et seq., 42 U.S.C. §1983, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1978, and any and all other related acts, laws and regulations through the date of the agreement. (Attachment to Parents Hearing Request.)

DISCUSSION:

BSEA proceedings are subject to rules regarding dismissal consistent with the Rules of Adjudicatory Procedure of the State Administrative Procedures Act, Chapter 30A\(^1\), and its own Hearing Rules for Special Education Appeals.

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\(^1\) See 801 CMR 1:01(7)(d) regarding Motions to Dismiss: “1. General Grounds. Any Party may move to dismiss for failure of the other Party to prosecute or to comply with these rules or with any order of the Agency or Presiding Officer. Upon completion by the initiating Party of the presentation of evidence, the responding Party may move to dismiss on the grounds that, upon the facts and/or the law, the initiating Party has not sustained its case. The Presiding Officer or Agency may act upon the motion then, or may wait until the close of all the evidence. The granting of such motion shall be considered a Decision and a written Decision shall be made as provided in 801 CMR 1.01(10)(m)2 (Final Decisions).” The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1:01(7)(d).
Consistent with the Standard Adjudicatory Rules, Rule XVII B of the Hearing Rules for Special Education Appeals addressing Dismissal and Closure of Case states in pertinent part that any party may request that a case be dismissed for,

1. lack of jurisdiction;
2. failure of the opposing party to prosecute or proceed with the case;
3. failure of the opposing party to follow or comply with the Rules or any Hearing Officer Order;
4. failure to state a claim upon which relief may be granted; or,
5. the clear failure of the opposing party to establish a viable claim for relief after presentation of its evidence.

The Hearing Officer may allow a motion or request to dismiss with or without prejudice.

The BSEA has long held that motions to dismiss are analogous to Motions filed pursuant to Rule 12(b)(6) of the Federal and Massachusetts Rules of Civil Procedure. Federal Courts have reasoned that motions to dismiss under Federal Rule of Civil procedure 12 (b)(6) may be allowed when it is beyond doubt that the plaintiff can prove no set of facts in support of his/her claim which would entitle him to relief. In the context of a motion to dismiss, all well–pleaded factual averments must be accepted as true and all reasonable inferences must be accepted in the plaintiff’s favor. If recovery may be justified under any applicable legal theory, then the motion to dismiss must be denied. Calderon-Ortiz v. LaBoy-Alvarado, 300 F.3d 60 (1st Cir. 2002).

The aforementioned rules and regulations make it clear that both the Hearing Rules for Special Education Appeals and the Standard Adjudicatory Rules of Practice and Procedure confer authority on Hearing Officers to allow motions to dismiss when the moving party fails to state a claim upon which relief may be granted. Relying on the terms of the Parties’ Agreement of January 2010 Marlborough seeks dismissal of all claims predating the date of the agreement, as such claims were specifically addressed and the agreement contains a specific release for them.

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2 See In Re: Norfolk County Agricultural School, BSEA # 06-0390 (Berman, 2006), … A BSEA Hearing Officer may allow a motion to dismiss if the party requesting the appeal fails to state a claim on which relief can be granted. Since this rule is analogous to Rule 12(b)(6) of the Federal and Massachusetts Rules of Civil Procedure, BSEA hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim. Specifically a motion to dismiss should be granted only if the party filing the appeal can prove no set of facts in support of his or her claim that would entitle him or her to relief that the BSEA has authority to order. That is, a hearing officer may dismiss a case if he or she cannot grant relief under either the federal or state special education statutes or the relevant portions of Section 504 of the Rehabilitation Act.

3 Judge v. City of Lowell, 160 F.3d 67, 72 (1st Cir. 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).
Marlborough is correct that Parents are precluded from raising those issues previously disposed of through the settlement agreement. It is undisputed that the Parties, with benefit of counsel, voluntarily entered into a settlement agreement which addressed and disposed of all claims predating January 22, 2010. The clear language of the agreement speaks for itself. Almost one year after executing the Agreement, during which time they received the consideration of Marlborough’s performance, Parents have changed their minds. They now attempt to litigate everything, including issues disposed of through the Agreement, because they are dissatisfied with the private placement of their choice. Parents had an opportunity to have those issues predating January 2010 heard during their previous case, and instead chose to enter into a settlement agreement as the means to dispose of the outstanding claims. As such, those claims are barred. Contrary to Parents’ argument, a hearing on the motion is not necessary to advance the Hearing Officer’s understanding of this matter. Similarly unpersuasive is the remainder of Parents’ arguments as set out in their motion. Any concerns Parents may have regarding contractual issues may be brought before a court with pertinent jurisdiction.

Parents may proceed in the instant matter with claims arising after January 22, 2010. As the issues for Hearing are narrower, the Hearing will proceed on March 23 and 24, 2011 at 10:00 a.m. at the BSEA, 75 Pleasant St., Malden, MA.

**ORDER:**

Marlborough’s Motion to Dismiss all claims preceding January 22, 2010 with Prejudice is hereby GRANTED.

So Ordered by the Hearing Officer,

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Rosa I. Figueroa
Dated: January 21, 2011