COMMONWEALTH OF MASSACHUSETTS
SPECIAL EDUCATION APPEALS

In Re: Boston Public Schools **BSEA # 02-4323**
& Waltham Public Schools

RULING REGARDING DISMISSAL PURSUANT TO A SHOW CAUSE ORDER

Introduction.

On November 6, 2002, an *Order to Show Cause* was issued, requiring the parties to provide, within thirty days, good cause why this case should not be dismissed. On December 4, 2002, Father's attorney requested that this matter not be dismissed pending resolution of a dispute with Boston Public Schools (Boston) regarding compliance with an agreement regarding reimbursement for transportation for Student to and from his special education placement.

On December 9, 2002, the attorney for Waltham Public Schools (Waltham) requested that this matter be dismissed in its entirety because the only issue in dispute involves the alleged failure to comply with an agreement, and the Bureau of Special Education Appeals (BSEA) does not have jurisdiction over agreements.

Several BSEA decisions have concluded that enforcement of an agreement does not fall within the jurisdiction of the BSEA unless the agreement is included within the student's Individualized Education Program (IEP).[1] None of these decisions (including a decision by this Hearing Officer) considered the possibility that Section 1415(b)(6) of the Individuals with Disabilities Education Act (IDEA) may grant jurisdiction to an administrative Hearing Officer to consider and resolve disputes regarding settlement agreements.

I now re-visit this jurisdictional issue in light of Section 1415(b)(6) and the judicial decisions interpreting it.

Policy Considerations.

Before discussing Section 1415(b)(6), I will review briefly the policy considerations relevant to BSEA jurisdiction over agreements that resolve special education disputes.

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[1] E.g., *In Re: Agawam Public Schools*, BSEA # 02-2374, 8 MSER 103 (2002); *Andrew v. Norfolk Public Schools*, BSEA # 97-2792, 3 MSER 55 (1997); *In Re: Timothy W.*, BSEA # 96-3796, 2 MSER 213 (1996). I note, however, that BSEA decisions have effectively enforced agreements by precluding parents from litigating issues before the BSEA where those issues had previously been settled through agreement. *In Re: Dartmouth Public Schools*, BSEA # 02-3969, 37 IDELR 113 (2002); *In Re: Sharon Public Schools*, BSEA # 02-1490, 8 MSER 51 (2002); *In Re: North Reading Public Schools*, BSEA # 98-0944, 4 MSER 78 (1998); *In Re: Sartini*, BSEA # 93-2019 (June 1993).

In a variety of contexts, the federal courts have consistently stated that settlement agreements are encouraged as a matter of public policy because they promote the amicable resolution of disputes and reduce litigation within the courts.[2] The federal special education statute (IDEA) has explicitly adopted this federal policy by including a detailed section describing a state's mandate to establish procedures that allow parties to resolve special education disputes through mediation.[3]

The federal Third Circuit Court of Appeals has explained the relevance of this policy to the question of whether a special education settlement agreement should be enforced:

> We are concerned that a decision that would allow parents to void settlement agreements when they become unpalatable would work a significant deterrence contrary to the federal policy of encouraging settlement agreements. . . . In this case, public policy plainly favors upholding the settlement agreement entered between D.R.'s parents and the Board.[4]

Relying on these policy considerations, a federal District Court has held that an administrative Hearing Officer may enforce the terms of a voluntary settlement agreement entered into between parents and the school district for the purpose of resolving a special education dispute.[5]

I recognize that there are policy considerations which argue against BSEA enforcement of settlement agreements, as recently articulated by a BSEA Hearing Officer.[6] However, I conclude that the enforcement of settlement agreements by BSEA Hearing Officers is supported by the underlying purposes of the IDEA.[7] And, in the words of the United States Supreme Court, "public policy wisely encourages settlements."[8]

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[2] E.g., *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 114 S.Ct. 1461, 1468 (1994); *Williams v. First National Bank*, 216 U.S. 582, 595, 30 S.Ct. 441, 445, 54 L.Ed. 625 (1910); *ABKCO Music, Inc. v. Harrisongs Music Ltd.*, 772 F.2d 988-997 (2d Cir. 1983); *In re: Penn Central Transportation Co.*,445 F.2d 811, 814 n. 6 (3d Cir. 1972); *D.H. Overmyer Co. v. Loflin*,440 F.2d 1213, 1215 (5th Cir. 1971); *Petty v. General Accident Fire and Life Assurance Corp.*,365 F.2d 419, 421 (3d Cir. 1966).

[3] 20 USC 1415(e).

[4] *D.R. v. East Brunswick Bd. Of Educ.*, 109 F.3d 896 (3d Cir. 1997).

[5] *Mr. J. v. Board of Education*, 98 F. Supp.2d 226 (D.Conn. 2000).

[6] *In Re: Agawam Public Schools*, 8 MSER 103, 105 (SEA MA 2002):

> Private parties may agree on terms that are mutually beneficial logistically or financially but which should not be endorsed by a government agent charged with upholding a civil rights statute. It is not uncommon, for example, for a Settlement Agreement to contain a clause in which the parents "waive placement pending appeal," or make a financial contribution to an educational institution. These provisions could not be independently ordered by the Bureau as a "remedy" in an appeal. Nor should they be enforced by the Bureau as a term of a settlement agreement as they abrogate fundamental procedural protections available to the Student under federal and state law.

[7] See *Board of Education of the Chippewa Valley School District*, 27 IDELR 429 (SEA Mich. 1977) (Lynwood E. Beekman, Hearing Officer):

> One of the oldest and firmest policies in law is that the resolution of disputes through compromise and settlement is favored as opposed to litigation. That one of the underlying purposes of IDEA is to strongly encourage the resolution of disputes through compromise and settlement is inherent in the IEP process itself and reinforced by the new provisions recently added regarding mediation. In an effort to carry out the

Jurisdiction under the Federal Special Education Statute.

Since a BSEA Hearing Officer has limited (as compared to general) jurisdiction, the authority to address a voluntary settlement agreement must be found within the statutory or regulatory language establishing the due process procedures for resolution of special education disputes.[9]

Section 1415(b) of the IDEA provides in relevant part:

> The procedures required by this section shall include -- . . .
> (6) complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; . . . .[10]

Two federal District Courts have considered whether section 1415(b)(6) grants jurisdiction to an administrative Hearing Officer over a voluntary settlement agreement. These cases arose in the context of the moving party seeking to enforce the settlement agreement in court, prior to the Hearing Officer having addressed the matter.

Both federal Courts concluded that a claim that the school district had failed to comply with the settlement agreement is essentially a "complaint" within the meaning of section 1415(b)(6), thereby falling within the jurisdiction of the administrative due process hearing. In each case, in order to exhaust administrative due process procedures, the Court ordered that the matter be returned to the Hearing Officer for consideration of this issue.[11]

Similarly, a third federal District Court concluded: "The issue of whether a breach existed of any settlement between the parties is itself an entire new issue to be complained of and put through the proper administrative process."[12]

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original intention of the parties, as well as effectuate the purposes underlying IDEA, this hearing officer concludes, based upon the above rulings and precedent, that he has the authority to enforce the oral settlement agreement entered into by the parties on August 22, 1997. [Citations omitted.]

[8] *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 114 S.Ct. 1461, 1468 (1994).

[9] *In Re: Boston Public Schools*, BSEA # 01-2461, 7 MSER 16, 22 (2001). Cf. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994) ("enforcement of the settlement agreement . . . is more than just a continuation or renewal of the dismissed suit and hence requires its own basis for jurisdiction").

[10] 20 USC 1415(b). Language within the state special education regulations provides a similar, yet somewhat broader, grant of jurisdiction to BSEA Hearing Officers. See 603 CMR 28.08(3)(BSEA Hearing Officer may address disputes regarding "any matter concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities"); 603 CMR 28.08(5)(c)(BSEA Hearing Officers "have the power and the duty to . . . ensure that the rights of all parties are protected").

[11] *Steward v. Hillsboro School District No. 1J*, CV 00-835-AS, LoisLaw Federal District Court Opinions (D. Oregon 2001); *W.L.G. v. Houston County Board of Education*, 975 F.Supp. 1317, 1328-1329 (MD Ala. 1997).

[12] *Tyson v. Kanawha County Bd. of Ed.*, 22 F.Supp.2d 535, 537 (S.D. W. V. 1997).

The First Circuit Court of Appeals has also considered section 1415(b)(6) with respect to the authority of a Hearing Officer. The parents had alleged that the school district failed to implement an amended Individualized Education Plan [sic] (referred to by the Court as the "amended Plan"). The parties had withdrawn their request for an administrative due process hearing after agreement was reached regarding the amended Plan. Within the amended Plan, there were mutual promises by the parties, including a commitment by the parents that the student would attend classes and complete assignments and a commitment by the school district to conduct air quality tests and evaluate the placement after a ten-week transition period.[13]

In determining whether the Hearing Officer has the authority to consider parents' claims, the First Circuit discussed the scope of the administrative due process hearing:

> The scope of the due process hearing is broad, encompassing "complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." Id. § 1415(b)(6).[14]

The Court found that prior to consideration by a federal court, the Hearing Officer must review parents' "complaints" which include the failure to implement what was agreed upon by the parties. The Court did not give significance to the fact that the parties' agreement was memorialized within an amended Individualized Education Plan as compared to a more traditional settlement agreement. Rather, the Court explained that parents' "complaints relate unmistakably" to what must first be considered by the Hearing Officer pursuant to section 1415 (b)(6) – that is, the "evaluation and educational placement of [student] in the Coventry school system and to the provision of a free appropriate education there".[15]

I am not aware of any other judicial decisions interpreting Section 1415(b)(6) of the IDEA with respect to the issue of a Hearing Officer's jurisdiction over settlement agreements.[16]

I conclude that section 1415(b)(6) of the IDEA, as interpreted by the federal judicial decisions discussed above, grants to a BSEA Hearing Officer jurisdiction over the agreement in the present dispute. Were a BSEA Hearing Officer not to exercise jurisdiction over this

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[13] *Rose et al. v. Yeaw*, 214 F.3d 206, 210 (1st Cir. 2000).

[14] *Id.* Federal District Courts in Massachusetts have similarly concluded that a BSEA Hearing Officer has a broad scope of jurisdiction. *Bowden v. Dever*, CA No. 00-12308-DPW (D.Mass. March 20, 2002) ("any aspect of the school's treatment that interferes with the provision of a free, appropriate public education is within the scope of the IDEA's administrative procedures"); *Frazier v. Fairhaven School Committee*, 122 F. Supp.2d 104 (D.Mass. 2000) (the special education administrative process "includes a hearing that is broad in scope").

[15] *Rose et al. v. Yeaw*, 214 F.3d 206, 210 (1st Cir. 2000).

[16] I am aware of only one judicial decision which has held that special education Hearing Officers do not have the authority to address disputes regarding settlement agreements. The decision did not consider section 1415(b)(6) of the IDEA. *School Board of Lee County v. M.C. ex rel B.C.*, 35 IDELR 273 (Fla. 2nd Dist. Ct. App. 2001) (without analysis or citation to legal authority, the decision concluded that the state court, and not a Florida special education Hearing Officer, has jurisdiction over settlement agreements).

agreement, the parties would not have the opportunity to exhaust administrative due process procedures.

Order.

For the above reasons, this matter may not be dismissed for lack of jurisdiction. The Show Cause Order is EXTENDED through the close of business on January 16, 2003. This case will be dismissed unless a party indicates in writing, on or before January 16, 2003, good cause why the case should not be dismissed.

Waltham Public Schools (Waltham) is DISMISSED as a party in this dispute since the only remaining issue (compliance with the agreement between Father and Boston) does not involve Waltham.

By the Hearing Officer,

William Crane
Dated: December 16, 2002