

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

In re: Gabrielle¹

BSEA #1505232

**RULING ON CLINTON PUBLIC SCHOOLS' MOTION TO JOIN WACHUSETT
REGIONAL SCHOOL DISTRICT**

This matter comes before the Hearing Officer on the Motion of the Clinton Public Schools to Join the Wachusett Regional School District pursuant to *Bureau of Special Education Appeals Hearing Rule I(J)* in a matter now pending before the Bureau of Special Education Appeals (“BSEA”). Clinton Public Schools (hereinafter “Clinton”) filed its Motion on March 25, 2015. On March 31, 2015, Wachusett Regional School District (hereinafter “WRSD”) filed a Response to Clinton’s Motion, indicating that it lacks sufficient information at this time to either oppose or assent to its joinder as a party defendant in this matter. No response has been filed by the remaining parties in the matter, Gabrielle’s Grandparents or West Springfield Public Schools (hereinafter “WSPS”). No party has requested a hearing on the Motion, and as testimony or oral argument would not advance the Hearing Officer’s understanding of the issues involved, this Ruling is being issued without a hearing pursuant to *Bureau of Special Education Appeals Hearing Rule VII(D)*. For the reasons set forth below, Clinton’s Motion to Join WRSD is ALLOWED.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On January 20, 2015 the Grandparents of Gabrielle filed a Hearing Request with the BSEA against the West Springfield Public Schools seeking findings that WSPS’ proposed Individualized Education Program was not reasonably calculated to provide Gabrielle with a free, appropriate public education; that the residential special education school where the Grandparents had unilaterally placed Gabrielle at the beginning of the 2014-2015 school year is an appropriate placement; and that the Grandparents are entitled to retroactive reimbursement for this placement. They also sought an order that WSPS develop an IEP for Gabrielle’s placement at that school for the remainder of the current school year as well as the 2015-2016 school year. Among the Exhibits filed with their Hearing Request, the Grandparents submitted a Caregiver Authorization Affidavit whereby Gabrielle’s mother, who resides in Clinton, Massachusetts, authorized Gabrielle’s grandmother and grandfather, who reside in West Springfield,

¹ “Gabrielle” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

Massachusetts, “to exercise concurrently the rights and responsibilities . . . that [she] possess[ed] relative to the education and health care of” Gabrielle.²

On February 10, 2015, WSPS filed its Response to the Hearing Request, along with a Motion to Join the Clinton Public Schools as a Necessary Party. In support of its Motion, West Springfield submitted an Assignment of School District Responsibility letter dated October 30, 2014, under which the Department of Elementary and Secondary Education (“DESE”) had determined that financial responsibility for Gabrielle’s education belonged to Clinton, based on her mother’s residence,³ and that programmatic responsibility belonged to West Springfield, where Gabrielle was “currently living with caregivers.” By letter dated February 11, 2015, Clinton acknowledged to the BSEA that it was the fiscally responsible school district in the case and indicated that it did not object to being joined in the matter.

On March 25, 2015 Clinton filed a Motion to Join Wachusett Regional School District as a Necessary Party in the matter pending before the BSEA. In support of its motion, Clinton submitted an updated Assignment of School District Responsibility letter dated March 19, 2015. According to the updated letter Gabrielle’s father’s residence is in Sterling, Massachusetts. Pursuant to this most recent assignment, financial responsibility for Gabrielle’s education is to be shared between WRSD (which includes the town of Sterling) and Clinton, based on her parents’ residence, and programmatic responsibility is assigned to West Springfield. On March 31, 2015, WRSD filed a response to Clinton’s Motion to Join, noting that it intended to seek the DESE’s review and revision of its assignment of joint financial responsibility to Wachusett and reserving its right to seek dismissal as a party defendant in this matter before the BSEA. Within its Response, WRSD made several requests: (1) that the moving party and defendants be ordered to provide Wachusett with complete copies of all correspondence between the parties and all pleadings in this matter prior to any further proceedings being scheduled or conducted; (2) that WSPS be ordered to provide Wachusett’s counsel with a complete copy of the student’s West Springfield Public Schools’ student record within ten (10) calendar days; and (3) that the BSEA authorize WRSD to serve expedited discovery on the moving party in this matter with regard to the residency of the student, the student’s parents and the parents’ custody of this student.

DISCUSSION

A. Standard for Joinder

Pursuant to Rule I(J) of the BSEA *Hearing Rules for Special Education Appeals*, upon “written request of a party, a Hearing Officer may allow for the joinder of a party in cases where complete relief cannot be granted among those who are already parties, or if the party being

² The Caregiver Authorization Affidavit is a notarized document prepared pursuant to M.G.L. c. 201F. The Grandparents’ standing to file an action at the Bureau of Special Education Appeals (BSEA) on behalf of Gabrielle was the subject of a previous ruling in this matter, issued on April 6, 2015.

³ The Department of Elementary and Secondary Education (DESE)’s Assignment of School District Responsibility letter dated October 30, 2014 noted that Gabrielle’s father’s last known address was the same as her mother’s, but that it was “unclear whether or not he continues to live at this address.”

joined has an interest relating to the subject matter of the case and is so situated that the case cannot be disposed of in its absence.” The *Hearing Rules* instruct the Hearing Officer to consider the following factors in determination of joinder: “the risk of prejudice to the present parties in the absence of the proposed party; the range of alternatives for fashioning relief; the inadequacy of a judgment entered in the proposed party’s absence; and the existence of an alternative forum to resolve the issue.”⁴

B. Application of Joinder Rule

The most recent DESE Assignment of School District Responsibility letter indicates that WRSD shares financial responsibility for Gabrielle’s education with Clinton. WRSD indicated in its Response to Clinton’s Motion for Joinder that it believes the DESE’s assignment of shared financial responsibility to be based on inaccurate information and, consequently, erroneous, and expressed its intention to provide accurate information to the DESE and to seek the DESE’s review and revision of joint financial responsibility to Wachusett. However, as of this date the March 19, 2015 letter stands. Programmatic responsibility for Gabrielle’s education remains with WSPS, while fiscal responsibility is assigned jointly to Clinton and WRSD. The Grandparents’ case before the BSEA seeks both retroactive reimbursement for their unilateral placement of Gabrielle in a private residential school and prospective placement at that same program. Should the Grandparents procure a ruling in their favor before the BSEA, WRSD will be charged with half of the cost of Gabrielle’s education, unless and until it persuades the DESE to alter the March 19, 2015 assignment of responsibility. Should it not prevail before the DESE, WRSD would similarly be responsible for half the cost of Gabrielle’s placement unless and until it persuades the BSEA in a separate case challenging DESE’s residency of the same.⁵ For this reason, WRSD has an interest relating to the subject matter of the case, and is so situated that the case cannot be disposed of in its absence. Moreover if WRSD is not joined Clinton would be the only party within the BSEA’s jurisdiction in this matter that could be ordered to reimburse the Grandparents, despite DESE’s March 19, 2015 Assignment of School District Responsibility. This certainly presents a risk of prejudice to a present party in the absence of a proposed party.

C. Additional Matters

The remaining parties in this matter may wish to respond to the additional requests raised by WRSD within its Response to Clinton’s Motion, and they have until close of business on April 7, 2015 to do so. As a Pre-Hearing Conference has been scheduled for April 15, 2015, those matters will be discussed at that time.

⁴ BSEA *Hearing Rules Rule I(J)*.

⁵ Pursuant to BSEA *Hearing Rule XVIII*, the BSEA is authorized to hear appeals of DESE Assignments of School District Responsibility.

CONCLUSION

Upon consideration of Clinton Public Schools' Motion to Join the Wachusett Regional School District, as well as WRSD's response and the relevant documents submitted by the parties, I find that joinder of WRSD in this matter is appropriate. WRSD, of course, remains free to file a Motion to Dismiss itself from the case should it successfully challenge DESE's determination that it bears joint fiscal responsibility for Gabrielle's education.

ORDER

Clinton Public Schools' Motion to Join the Wachusett Regional School District is hereby ALLOWED.

A Pre-Hearing Conference in this matter is scheduled to take place at 10:00 am on April 15, 2015. The Hearing will take place on May 1, 4 and 7, 2015.

By the Hearing Officer:

Amy M. Reichbach
Dated: April 7, 2015