

**COMMONWEALTH OF MASSACHUSETTS**  
**DIVISION OF ADMINISTRATIVE LAW APPEALS**  
**Bureau of Special Education Appeals**

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In Re: Student

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BSEA No. 1611011

Natick Public Schools

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**RULING ON MOTION OF PARENT TO JOIN THE DEPARTMENT OF  
CHILDREN AND FAMILIES AS A NECESSARY PARTY**

Student is a 13-year-old Natick Public Schools student. Student is eligible for special education services on the basis of an emotional disability. Currently, the Natick Public Schools (Natick or School) funds Student's placement at an approved private special education day school. Parent seeks to join the Department of Children and Families (DCF) in this matter because she asserts that DCF was "complicit" with alleged actions by Natick that Parent believes deprived Student of a free, appropriate public education (FAPE) and created a "hostile environment" within the Natick Public Schools. Parent's position is that Student's need for an out-of-district placement was caused by Natick's alleged discrimination, retaliation, and other unlawful actions, and that DCF (among others) collaborated with Natick to deprive Student of her rights. Currently, Parent seeks compensatory services in the form of activities with non-disabled peers, including sports, clubs and language classes, as well as counseling to address stress allegedly caused by Natick's actions and failures to act.

**Procedural History**

On June 17, 2016, Parent<sup>1</sup> filed a *Hearing Request* with the Bureau of Special Education Appeals (BSEA) consisting of a chronology of various disputes between Parents and Natick. On June 23, 2016 Natick filed a *Response* as well as a *Motion to Dismiss the Hearing Request* based, *inter alia*, on a failure to state a claim on which relief could be granted. Parent filed an *Amended Hearing Request* on or about July 3, 2016, which appears to elaborate on the initial

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<sup>1</sup> Only one Parent is involved in filing pleadings and memoranda in this matter; however, Student lives with both Parents.

*Hearing Request* and also add a claim of retaliation by Natick. On the same date, Parent also filed an *Opposition to Natick's Motion to Dismiss*. On July 16, 2016, Natick filed a *Response to the Amended Hearing Request and Supplemental Motion to Dismiss*. On July 25, 2016, Parent filed an opposition to the *Supplemental Motion to Dismiss*. This opposition contained a request to join DCF as a party to the pending BSEA matter. Parent served DCF with the opposition containing the joinder request between July 28 and August 1, 2016. DCF filed an *Opposition to Motion to Join* on August 10, 2016. Natick has not filed any response to Parent's *Motion*.

### **Factual Background**

For purposes of this *Ruling*, I consider the following statement of facts, drawn from the parties' written submissions, to be undisputed. Student is a 13-year-old special education student attending a DESE-approved private special education day school. Natick currently funds this placement.<sup>2</sup> The appropriateness of the IEP and placement are not in dispute in the above-entitled matter.<sup>3</sup>

In or about November 2015 Natick applied for a Child Requiring Assistance (CRA) petition with the Juvenile Court. At about the same time, Natick also filed a report with DCF pursuant to MGL c. 119 §51A ("51A report"). Natick took both actions because of concerns about Student's school attendance. Additionally, at some point during the 2015-2016 school year, a Care and Protection ("C&P") action was filed in the Juvenile Court on behalf of Student pursuant to MGL c. 119 §24. On information and belief, Student's school attendance was a subject of the proceeding. Natick did not initiate the C&P proceeding, and the parties' submissions do not identify the petitioner in that matter. On or about March 31, 2016, Parents and DCF resolved the C&P matter via informal settlement. The case was ultimately dismissed in or about June 2016. Natick was not a party to the court case or the settlement.

The record does not indicate that Student ever entered DCF care or custody as a result of the Juvenile Court proceedings or otherwise. Student is not in DCF care or custody now. DCF does not currently have an open case on Student or her family and is providing no services to Student.<sup>4</sup> There is no

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<sup>2</sup> On August 15, 2016 Natick filed a *Motion to Join Framingham Public Schools* as a party in this matter based on DESE's determination dated August 9, 2016 that Framingham and Natick share programmatic and financial responsibility for Student's out-of-district placement pursuant to 603 CMR 29.10(2)(a)(2). The *Motion to Join Framingham* has no effect on this *Ruling*.

<sup>3</sup> Parent has expressed misgivings about the appropriateness of the private school placement, which she believes to be overly restrictive with an inappropriate peer group; however, she does not seek to change that placement at this time..

<sup>4</sup> In its *Response* to the Parent's initial hearing request, Natick reported that on information and belief, DCF was still involved with Student's family; however, DCF denied any such involvement in its *Opposition* to Parent's joinder motion.

indication in the parties' submissions that Parents have sought or are seeking such services.

## **POSITIONS OF THE PARTIES**

### **Position of Parent**

In her *Opposition to Natick's Supplemental Motion to Dismiss* (which contains the request to join DCF) Parent contends that DCF was "complicit with [Natick] in the denial of FAPE through intimidation, discrimination and harassment of the disabled." Further, Parent alleges that she (and Student's Father) only accepted the IEP for the private school because DCF's agreement to dismissal of the C&P was contingent upon such acceptance; had they not accepted the IEP and placement they risked loss of custody of Student to DCF.

### **Position of DCF**

DCF argues that the purpose of joinder would be to enable the BSEA to order it to provide services to Student in addition to the services provided by Natick. Because Parents have made no claim for services from DCF, there is no basis for joinder under the relevant statute and regulations. Further, the complete absence of any current involvement of DCF with Student or her family means that the BSEA could not issue any orders for services against DCF without contravening the Department's rules, regulations or policies.

### **Position of Natick Public Schools**

Natick has taken no position on the issue of joining DCF as a party in this matter.

### **Legal Framework**

Pursuant to M.G.L. c. 71B §3 the BSEA may order human service agencies to provide services to the child who is the subject of the hearing, as follows:

The hearing officer may determine, in accordance with the rules, regulations and policies of the respective agencies, that services shall be provided by the [human service agencies including DCF] or any other state agency or program in addition to the program and related services to be provided by the school committee. *Id.*

The implementing regulation provides that "the jurisdiction of the [BSEA] over state agencies...shall be exercised in accordance with the rules, regulations and policies of the respective agencies..." 603 CMR 28.08(3). In other words,

the BSEA may order the agency to provide services that are (a) among those that the agency's own regulations authorize or require it to provide for the student at issue, and, (b) necessary to enable the student to benefit from the free, appropriate public education (i.e., special education and related services) already required of and provided by the school district.

Obviously, in order to exercise jurisdiction over the state agency, the BSEA must first join the agency as a party to the hearing at issue. Joinder is addressed in Rule I.J of the *Massachusetts Hearing Rules for Special Education Appeals* (BSEA Hearing Rules) which allows a BSEA hearing officer to join a person or entity as a party:

...where complete relief cannot be granted among those who are already parties, or the person being joined has an interest relating to the subject matter of the case [such that]...the case cannot be disposed of in their absence. Factors in determining whether joinder is appropriate are: the risks of prejudice to the present parties; the range of alternatives for fashioning relief; the inadequacy of a judgement entered in the proposed party's absence and the existence of an alternative forum to resolve the issues. *Id.*

In general, factors that hearing officers consider in determining whether the criteria of 603 CMR 28.08(3) and Rule I.J have been met include the following:<sup>5</sup>

- The student's eligibility for services from the agency;
- status (or lack thereof) as a current client of the agency;
- length and degree of involvement that the agency already has with the student, if any;
- likelihood that the evidence at hearing will show that the student needs services that only are available from the agency to benefit from special education, that the agency has refused or failed to provide such services, and that no appropriate forum exists to contest the agency's decision;

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<sup>5</sup> *In Re Boston Public Schools*, BSEA No. 06-5402, 12 MSER 209 (Figuroa, 2006) (DMH joined as a party where student was already eligible for and receiving DMH services and was highly likely to continue needing DMH services that the LEA could not necessarily provide); *In Re: Medford Public Schools*, BSEA #01-3941, 7 MSER 75 (Crane, 2001) (Former Department of Mental Retardation, or DMR, now Department of Developmental Services or DDS, joined as a party where the adult student needed and was eligible for a DMR-funded group home to provide her with housing in order to attend school).

- likelihood that an order to the school district alone will provide the student with FAPE;
- administrative efficiency of joining a potentially responsible state agency early in the proceeding.

On the other hand, the BSEA has declined to join human services agencies in situations where the agency has found the student ineligible or has not determined eligibility under its own regulations,<sup>6</sup> where the student is eligible only for minimal services from the agency,<sup>7</sup> or where agency involvement in the future is theoretically possible but speculative.<sup>8</sup>

### **RULING AND DISCUSSION**

Based on the relevant law as applied to the facts asserted by the parties, I rule that Parents' Motion to Join DCF as a party in this matter is DENIED. My reasoning follows.

DCF should not be joined as a party in the instant case because none of the criteria for joinder listed in the "Legal Frameworks" section of this *Ruling* have been met. Student is not a current client of DCF. She is not in DCF care or custody, voluntary or otherwise, and receives no DCF services. Moreover, Parents seek no DCF services for Student and/or their family now, and there is no evidence in the parties submissions that they intend to do so in the future. The relief sought by Parent in the instant case consists of compensatory services in the form of access to general education classes and activities in addition to Student's current educational placement. These are services typically and routinely provided by school districts without human service agency involvement; complete relief can be granted if DCF is not a party.

Neither of the current parties--Parents or Natick--alleges that Student needs services from DCF in addition to the services already provided by the school district in order to receive a FAPE. The prior involvement that DCF had with the family was of short duration; even if the involvement was intensive (and

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<sup>6</sup> See, e.g., *In Re Boston Public Schools*, BSEA No. 06-6542, 12 MSER 203 (Figueroa, 2006) and *In Re West Springfield Public Schools*, BSEA No. 04-5315, 10 MSER 472 (Byrne, 2004) In both cases, the hearing officer declined to join DMH as a party when DMH previously had found the student ineligible for agency services. The BSEA occasionally has joined state agencies that have not determined eligibility, but only in extraordinary circumstances such as a "substantial showing of agency misaction," or where the agency is providing services without having determined eligibility. *In Re Ware Public Schools*, BSEA No. 05-4126, 11 MSER 137 (Byrne, 2004)

<sup>7</sup> See: *In Re: Brockton Public Schools*, BSEA No. 02-3337, 8 MSER 208 (Oliver, 2002) Hearing officer denied joinder of DMR in residential placement case when the student's DMR eligibility was limited to family support services.

<sup>8</sup> See *In Re: Plymouth Public Schools*, BSEA No. 06-2584, 12 MSER 33 at 35, (Crane, 2006), citing *In Re Ware Public Schools*, BSEA No. 05-4126, 11 MSER 137, 139 (Byrne 2004)

there is no indication in the record one way or the other), it only lasted from around November 2015 to April or June 2016. There is nothing in the parties' written submissions to indicate that Student will need services that are only available from DCF to benefit from special education, and no allegation from either party that Natick alone cannot provide Student with FAPE.

Parent's primary basis for her request for joinder is her allegation that DCF and Natick acted jointly to deprive Student of her special education rights, and that DCF effectively coerced Parents' acceptance of Natick's proposed IEP as a condition of retaining Parents' retaining custody of their daughter. According to Parent, but for this concerted activity on the part of Natick, DCF and others, Student could have attended a less restrictive setting than her current placement.

These allegations, even if proved, do not support joinder of DCF in this matter because they do not state a claim for which the BSEA may grant relief against DCF. The BSEA's sole authority over any human service agency that has been made a party in a special education due process hearing is to order the agency to provide services that are consistent with its own regulations, if those services are necessary to ensure that a student receives a FAPE. The BSEA has no authority to redress past wrongdoing allegedly committed by a human service agency in the exercise of its agency functions.

In the instant case, complete relief, *i.e.* all relief sought by Parent from the BSEA, can be granted without DCF as a party. There is no risk of prejudice to any existing party if DCF is not joined because there is no remedy that the BSEA can order against DCF. I conclude, therefore, that there is no basis within the MGL c. 71B §3, 603 CMR 28.08(3), or Rule I.J. to grant Parent's *Motion*.

### **ORDER**

The Parent's *Motion to Join DCF* as a party in this matter is DENIED.

By the Hearing Officer,

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Sara Berman

Dated: August 16, 2016