

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

In re: Eli¹ v. Norwood Public Schools &
Massachusetts Department of Children and Families

BSEA #1710189

**RULING ON NORWOOD PUBLIC SCHOOLS' MOTION TO JOIN THE
MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES**

This matter comes before the Hearing Officer on a Motion filed by the Norwood Public Schools (Norwood or "the District") in connection with a Request for Hearing filed against the District by Eli's parent on June 26, 2017. In her *Hearing Request*, Parent rejected the in-district placement Norwood had proposed for the summer and requested an expedited hearing and an order that Eli remain at the May Institute instead. As Parent's *Hearing Request* did not meet the standard for expedited hearing, the Hearing was scheduled for July 31, 2017. On June 30, 2017, the District filed its Response to Parent's *Hearing Request* and a Motion to Join the Department of Children and Families (DCF) ("Motion," or "Motion for Joinder") as a necessary party.² On July 6, DCF filed its Opposition to Parent's Motion. The parties participated in a telephonic Motion Session on August 23, 2017.

For the reasons set forth below, the District's Motion is hereby ALLOWED.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The following facts are not in dispute and are taken as true for the purposes of this Ruling. These facts may be subject to revision in subsequent proceedings.

1. Eli is a ten (10) year old resident of Norwood, Massachusetts. He is eligible for special education pursuant to 20 U.S.C. §1401 *et seq.* and M.G.L. c. 71B. (*Motion for Joinder*)
2. Eli has been diagnosed with global developmental delay, Post-Traumatic Stress Disorder, and Attention Deficit Hyperactivity Disorder. (*Motion for Joinder*)
3. Eli is currently in the care and custody of DCF. (*Motion for Joinder*)
4. On or about March 2015, DCF removed Eli from his home and placed him residentially at the May Institute ("May"). DCF fully funded both the residential and educational components of the placement. (*Motion for Joinder*)

¹"Eli" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

²The District also objected to Parent's request for an expedited hearing but as expedited status was not granted, the Bureau of Special Education Appeals (BSEA) did not address this part of its filing.

5. According to the District, the last agreed-upon Individualized Education Program (IEP) for Eli was generated by the Boston Public Schools and calls for an in-district substantially separate placement. (*Motion for Joinder*)
6. In May 2017, the District proposed an IEP dated March 30, 2017 to March 29, 2018 providing for placement in the Norwood Public Schools starting July 1, 2017, the anticipated date of Eli's return to the District for his educational programming. (*Motion for Joinder*)
7. In June 2017, the District proposed an IEP dated July 1, 2017 to June 30, 2018 again providing for an in-district substantially separate program, including summer programming, similar to the placement Eli attended prior to his removal from home and placement at May by DCF. (*Motion for Joinder*)
8. In her *Hearing Request*, filed June 26, 2017, Parent requested that the District fund summer services at the May, as previously provided and funded by DCF. (*Hearing Request; Motion for Joinder*)
9. On July 6, 2017, DCF filed its Opposition to the District's Motion for Joinder.
10. Parent requested postponement of the proceedings through a filing on July 13, 2017 and during the Conference Call that took place on July 17, 2017, so that she could obtain legal representation. A Pre-Hearing Conference was scheduled for August 15, 2017.
11. On July 24, 2017, the District requested postponement of the Pre-Hearing Conference due to the unavailability of key District personnel.
12. On August 8, 2017, Counsel for Parent filed a Notice of Appearance and a Conference Call was scheduled for August 23, 2017.
13. During the Conference Call, Parent, through Counsel, indicated that Eli had been hospitalized from August 11 to August 22, 2017 and would need a comprehensive educational program upon his return to school. DCF agreed to work with the District, and a Pre-Hearing Conference was scheduled for September 14, 2017.

LEGAL STANDARDS

Pursuant to M.G.L. c. 71B, § 2A and 603 CMR 28.08(3), the BSEA has jurisdiction "to resolve differences of opinion among school districts, private schools, parents, and state agencies." A Motion for Joinder of a state agency in a pending case requires an analysis of both the rules for joinder of additional parties and BSEA jurisdiction to order that services be provided by state agencies in pending cases.

Pursuant to the BSEA's joinder rule, set forth in Rule I(J) of the *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 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. Factors considered in determination of joinder are: 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 issues.”

This mechanism is often used by parties to join state agencies (such as DCF) that the BSEA may determine must provide services to a student in a matter before it. The extent to which the BSEA may order such services is set forth in Mass. Gen. Laws ch. 71B, § 3, which provides:

“The [BSEA] hearing officer may determine, in accordance with the rules, regulations and policies of the respective agencies, that services shall be provided by the department of children and families, the department of mental retardation [now the department of developmental services], the department of mental health, the department of public health, or any other state agency or program, in addition to the program and related services to be provided by the school committee.”³

As such, to determine whether DCF should be joined in the present case, I must determine, first, whether complete relief may be granted among those who are already parties, or if the agency 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;⁴ and if so, whether joinder of DCF is in accordance with the agency's rules, regulations, and policies.⁵

ANALYSIS

The District argues in its Motion that DCF is a necessary party in this matter because Eli is in DCF's care or custody, and DCF, and not the District, is responsible for Eli's placement at the May Institute. DCF, in turn, asserts that because Parent has challenged the summer program proposed by Norwood and claims that the proposed program is inadequate because it fails to provide educational services required under Eli's IEP, the District itself is in a position to provide complete relief. As such, joinder is improper.

At this point, I have little information regarding Eli and his needs, educational or otherwise. I may, upon considering all of the evidence in the case on the merits, find that Eli

³M.G.L. c. 71B, § 3; see 603 CMR 28.08(3) (corresponding regulations).

⁴BSEA *Hearing Rule* I(J).

⁵M.G.L. c. 71B, § 3.

requires nothing more than the in-district services Norwood proposes. In the alternative, I may find that he requires a residential placement for educational or non-educational purposes, or that he requires home services in order to access his education. It appears, therefore, that the first part of the analysis weighs in favor of joinder. But I cannot order DCF to provide any services, residential or home-based, if to do so would contravene DCF's own regulations.

Pursuant to its regulations, DCF may share the cost of a residential placement for a child in its care or custody,⁶ voluntary or otherwise.⁷ As Eli is in the care or custody of DCF, a cost-shared residential placement for him would be in accordance with the agency's rules, regulations, and policies, as would a range of home services.

Under these circumstances, joinder is proper.

CONCLUSION

In this matter, Parent asserts that Eli requires placement and services more intensive than those offered by Norwood. The District argues that to the extent Eli requires additional supports (up to and including residential placement), these supports are for non-educational reasons and as such, they are DCF's responsibility. At this early stage in the case, I cannot say that the District alone will be able to provide complete relief, and to the extent I may order that DCF provide services for Eli, the District bears the risk of prejudice if I dismiss the agency. For these reasons, I find that DCF is a necessary party to this matter.

ORDER

- 1) The District's Motion to Join DCF is ALLOWED.
- 2) A Pre-Hearing Conference in this matter will take place at 11:00 AM on September 14, 2017 at a location in Norwood to be provided by the District.

By the Hearing Officer:

Amy M. Reichbach

Dated: August 31, 2017

⁶ See 110 CMR 7.404(2) ("If a child's IEP specifies that a private day school program . . . is necessary to meet the child's special education needs and the Department determines that the child should be placed in community residential care for non-educational reasons, then the Department shall share the cost of the placement with the local educational agency.")

⁷ Cf. M.G.L. c. 119, § 21 (defining as "custody" the power to, *inter alia*, "determine a child's place of abode, medical care and education" and defining "child requiring assistance"); 110 CMR 4.00 (providing for education services for children *in the Department's care or custody*" (emphasis added)); 110 CMR 4.10 (pertaining to voluntary services).