

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

In re: Hudson<sup>1</sup>

BSEA #1810830

**RULING ON TAUNTON PUBLIC SCHOOLS' MOTION TO DISMISS ITSELF AS A PARTY**

This matter comes before the Hearing Officer on a Motion filed by Taunton Public Schools (hereinafter "Taunton" or "TPS") to dismiss itself as a Party to this case before the Bureau of Special Education Appeals (hereinafter "BSEA"). Taunton filed a Motion to Dismiss Itself as a Party (hereinafter "*Motion to Dismiss*" or "*Motion*") in this case on June 6, 2018. Both Norton Public Schools ("Norton" or "NPS") and Parent filed written oppositions to Taunton's *Motion*. The instant Ruling was stayed at the parties' request while they pursued alternative dispute resolution. For the reasons set forth below, Taunton Public Schools' *Motion to Dismiss* is hereby ALLOWED.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

This case began with a *Hearing Request* filed by Parent on May 22, 2108 against Norton and Taunton, alleging that Hudson, a resident of Taunton who attends Norton High School through the School Choice Program, should not graduate in 2018 as scheduled because he requires transition programming to address ongoing needs stemming from his diagnoses of autism as well as his struggles with obsessive compulsive disorder and anxiety. Parent, who was at the time *pro se*, stated that the school districts have disagreed previously as to responsibility for Hudson's transition services. Her proposed resolution of the issue included deferment of Hudson's standard diploma and implementation of a transition year to include dual enrollment with Bristol Community College. The hearing was scheduled for June 26, 2018 and a Conference Call for June 11, 2018.

On May 31, 2018, Counsel for Taunton Public Schools filed on behalf of Taunton and Norton Public Schools a request for an extension of time to respond to Parent's *Hearing Request*. That request was allowed by Order on the same day. On June 6, 2018, Norton Public Schools filed its *Response* to Parent's *Hearing Request*. Also on June 6, 2018, Taunton filed a *Motion to Dismiss With Prejudice and Objection to Sufficiency of the Hearing Request*, arguing that Parent had failed "to identify any specific relief which is being sought that pertains to services or supports for which Taunton would have any obligation." On June 8, 2018, the undersigned Hearing Officer issued an Order denying Taunton's *Sufficiency Challenge* and specifically deferred consideration of the TPS' *Motion to Dismiss* until NPS and Parent had the opportunity to respond.

On June 13, 2018, Norton filed an assented-to *Motion to Postpone* the hearing in order to permit the parties to attempt to resolve the matter informally, which the undersigned Hearing Officer allowed. The matter was continued for a Pre-Hearing Conference (PHC) on July 18,

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<sup>1</sup>"Hudson" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

2018 and Hearing on August 7 and 9, 2018. On June 18, 2018, I received *Objections* to Taunton's *Motion to Dismiss* from both Parent and Norton, although the parties agreed to defer any Ruling on TPS's *Motion to Dismiss* until after they participated in mediation on July 31, 2018 and/or a PHC. On July 10, 2018, Taunton filed a *Response to Norton's Opposition and Further Request for Motion to Dismiss or for Reconsideration*, noting that it had no objection to staying the Ruling until after mediation.

Also on June 18, 2018, Norton filed an assented-to *Motion to Postpone* the PHC to a date following the mediation, which was subsequently allowed, and on July 12, 2018 NPS filed an assented-to *Motion to Postpone* the Hearing to allow the parties to continue working together toward resolution of the matter. On July 20, 2018, the undersigned Hearing Officer allowed the postponement and issued an Order scheduling the Hearing for September 20 and 24, 2018.

On August 6, 2018, an advocate entered a Notice of Appearance for Parent and Parent, through her advocate, filed an *Amended Hearing Request* along with a request to expedite the hearing. In her *Amended Hearing Request*, Parent alleges that the Districts failed to conduct adequate transition assessments of Hudson at any time after he turned fourteen (14). She reiterates that although Hudson passed MCAS and met other graduation requirements, his IEPs were not reasonably calculated to enable him to make progress on transition goals. As such, she asserts, Hudson's IEP dated 1/23/2018 to 1/22/2019, as well as his IEPs for the prior three years, is not reasonably calculated to provide him a FAPE and he is entitled to retain eligibility for special education, postpone receipt of his diploma, receive ongoing special education transition supports, services, and programming, and receive compensatory relief.

Specifically, Parent's *Amended Hearing Request* seeks an independent comprehensive Transition Evaluation, in addition to evaluations by Norton and/or Taunton in the following areas: comprehensive neuropsychological, assistive technology, social communication and functioning, executive functioning, adaptive community living, including travel skills, and functional academics. Parent requests two prospective placements: one, a "structured, full-time, post-12<sup>th</sup> grade transition program with supports for dual enrollment for the 2018-2019 school year" with "high cognitive" peers with similar needs; and the second, a "private residential transition program" such as Thames Academy at Mitchell College or the Landmark College Bridge Program for the 2018-2019 and 2019-2020 extended school years.

During a Conference Call on August 7, 2018, the parties supplemented their written submissions on Taunton's *Motion to Dismiss* with oral argument and indicated that they wished to have me consider both the *Motion* and the *Objections* with respect to the *Amended Hearing Request*. On this date, the parties also agreed to proceed to hearing on the *Amended Hearing Request* on the September dates that had previously been established. Although neither district has filed a *Response to the Amended Hearing Request* as of yet, Taunton's position is that to the extent Hudson is entitled to receive future services and/or placement, such services and/or placement are the responsibility of Norton, and that to the extent any allegations are made specifically against Taunton, they are beyond the statute of limitations. Norton's position, gleaned from its *Response* to the initial *Hearing Request*, is that NPS's IEP for the 2018-2019 school year, in addition to its IEPs for previous school years, is reasonably calculated to offer Hudson a FAPE; that Norton has actually provided Hudson with FAPE inclusive of transition

planning and the anticipated graduated date; that Hudson's graduation date does not warrant dispute; and that its obligations to Hudson have come to an end. Nevertheless, Norton has agreed to maintain Hudson in his most recent placement under "stay put." Parent's request to expedite her *Amended Hearing Request* was denied.

## FACTS

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

1. Hudson is eighteen (18) years old. He resides in Taunton and shares educational decision-making with his mother (Parent). Hudson has attended Norton High School through the School Choice Program since he began ninth grade.
2. Hudson's first IEP was developed by TPS in February 2007 while he was in first grade.
3. Hudson was placed by TPS at READS Academy while he was in first grade and remained there through the end of fourth grade. He returned to TPS in fifth grade and remained there through eighth grade (2013-2014 school year).
4. Parent contends that Taunton failed to provide Hudson with a FAPE due to its "continued failure and inability to follow the IEP and provide appropriate supports and services."
5. Hudson has been enrolled in NPS since the beginning of the 2014-2015 school year.
6. A three-year reevaluation meeting occurred in January 2018. Norton developed an IEP for the period from 1/22/2018 to 1/22/2019 ("2018-2019 IEP") that anticipated a graduation date of June 2018. According to NPS, Parent had accepted Hudson's prior IEPs, inclusive of transition planning and the anticipated June 1, 2018 graduation date, and they had expired without challenge.
7. On or about March 28, 2018, Parent partially rejected the 2018-2019 IEP, as to graduation date only, and requested an additional year of transition services.
8. Norton initially stated that Hudson would not be permitted to walk at the graduation ceremony, as he would not be receiving a diploma, though ultimately Hudson was permitted to walk with his peers.
9. Hudson remains enrolled in NPS, though Parent could choose to disenroll him and reenroll him in TPS, as he continues to reside in Taunton and has not received a high school diploma.

10. Both NPS and TPS offer specialized programs for students who remain enrolled through the age of twenty-two (22). Both Districts assert that the peer group in their respective programs is much lower functioning than Hudson and may not be appropriate for him.

## DISCUSSION

In its *Motion to Dismiss*, Taunton contends that it is not a necessary party to the case because Parent has failed to state a claim upon which relief can be granted against TPS. According to TPS, during all relevant times<sup>2</sup> Taunton had neither programmatic nor fiscal responsibility for Hudson. At no time since his transfer to NPS pursuant to “school choice” has he had an IEP calling for out-of-district placement. Although Parent seeks out-of-district placement for Hudson in her *Amended Hearing Request*, the requirements under 603 CMR 28.10(6) have not been satisfied to activate Taunton’s responsibility for Hudson. As such, Norton is still responsible for him and no relief may be granted against Taunton at this time. Taunton argues, further, that Parent seeks compensatory relief only, such that Hudson would have the right or ability to receive additional services only if Parent is able to prove that Norton failed to provide Hudson with a FAPE. As such, should the BSEA find that Hudson is entitled to further services or placement, any award of these must be in the form of compensation for Norton’s failures.

Parent’s initial response to Taunton’s *Motion*, filed June 18, 2018, was a letter expressing disagreement with it. She has since indicated that it matters less to her which district is found responsible than that Hudson be provided with continuing services and placement focused on his transition needs. In her *Amended Hearing Request*, however, Parent included allegations against Taunton individually as well as in combination with Norton.

In its *Objection to Taunton Public Schools’ Motion to Dismiss With Prejudice*, Norton asserts that as the District of residence, Taunton is an indispensable party in this matter. Under 603 CMR 28.10(6)(b), Taunton is financially responsible for any out-of-district services that might be awarded to Hudson, and moreover, NPS argues, Hudson could at any time pursue reenrollment in TPS’ program that serves students ages eighteen (18) to twenty-two (22). For these reasons, and because Norton has fully satisfied its obligation to provide Hudson with a FAPE, inclusive of transition services, Taunton is responsible for funding any additional or out-of-district services that may be awarded to Hudson.

Although generally a motion to dismiss may be granted if the party requesting the hearing fails to state a claim upon which relief may be granted through the BSEA, 801 CMR 1.01(7)(g) (3) and BSEA Hearing Rule XVII(B)(4), in this case Taunton has filed a motion to dismiss itself from the proceedings, which requires an assessment of whether TPS is properly before the BSEA as a party in this matter at this time. For this reason, although Parents initially filed their hearing request against both Norton and Taunton, the outcome will be governed by the rule for joinder of additional parties.

The BSEA’s joinder rule, set forth in Rule I(J) of the *Hearing Rules for Special Education Appeals*, provides as follows:

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<sup>2</sup> Parent’s initial *Hearing Request* contained allegations pertaining only to Hudson’s high school years and did not identify specific actions (or inactions) taken by Taunton separately. Although Parent’s *Amended Hearing Request* references substantive and procedural allegations against Taunton alone, Hudson last attended TPS no later than August 2014.

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 can be used to join parties, such as Taunton, that the BSEA may determine are responsible for the provision of services in a matter before it. Whether joinder is proper turns on Taunton's potential responsibility for Hudson's education.

The Individuals with Disabilities Education Act (IDEA) requires each Local Educational Agency to have an IEP in effect for each child with disabilities under its jurisdiction.<sup>3</sup> After the child reaches the age of fourteen (14), such IEP must contain the transition services needed to assist the child in reaching appropriate measurable postsecondary goals.<sup>4</sup> Parent asserts that Hudson has not received sufficient transition services and, as such, his eligibility for special education should not be terminated.

In this case, it is alleged that Taunton may be financially responsible for Hudson's additional transition services under 603 CMR 28.10(6). This regulation dictates that a "program school shall have programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law related to the program school."<sup>5</sup> 603 CMR 28.10(6) divides program schools into two categories, each with its own process by which a student's residential district becomes responsible for any out-of-district placement. Subsection 28.10(a) applies to charter schools, Commonwealth of Massachusetts virtual schools, schools attended under M.G.L. c. 76, § 12A (Metco) and vocational schools. For these schools, when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type; shall notify the school district where the student resides within two school days; and shall proceed in accordance with a detailed process that anticipates that the residential district may offer its own in-district programming. By assuming this active role, the residential district may be able to avoid financial responsibility for an out-of-district placement.<sup>6</sup> The BSEA has interpreted 603 CMR 28.10(6)(a) to allow dismissal of program schools, upon motion, in cases where the residential school has not established that a student may need an out-of-district placement and scheduled another meeting to determine placement to which it invites representatives of the residential school district to participate.<sup>7</sup>

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<sup>3</sup> 20 U.S.C. § 1414(d)(2)(A).

<sup>4</sup> M.G.L. c. 71B, § 2.

<sup>5</sup> 603 CMR 28.10(6).

<sup>6</sup> If the student's placement team, which includes members of both the residential and the school choice districts, determines that the student requires an out-of-district program to provide the services identified on the student's IEP, this program is proposed to the parent. Upon parental acceptance of the proposed IEP and placement, programmatic and financial responsibility for the student returns to the residential district. See 603 CMR 28.10(6)(a).

<sup>7</sup> See *In Re Whitman Hanson Regional School District and Kevin*, 21 MSER 101 (Reichbach 2015); *In Re Natick Public Schools*, 16 MSER 457 (Crane 2010).

In contrast, under the provision applicable to program schools attended pursuant to school choice,<sup>8</sup> such schools may “bill and receive payment from the school district where the student resides for the costs of out-of-district placements made by the program school.” The program school must only “invite the school district where the student resides to participate as a member of the student’s Team and shall provide notice of the Team meeting at least five school days prior to the meeting,” provided that such participation shall not limit the student’s right to a timely evaluation and placement in accordance with 603 CMR 28.00.<sup>9</sup> As such, where the student attends a program school pursuant to school choice, the role of the residential district is limited to paying for an out-of-district placement that is made by the program school. The regulation does not distinguish between placements made pursuant to a Team meeting and those made as part of a BSEA proceeding.

¶Against this background, I apply Rule I(J) of the BSEA *Hearing Rules* and 603 CMR 28.10(6) to decide this Motion. The key issues here are whether complete relief can be granted from Norton Public Schools, and whether Taunton Public Schools 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.

As Hudson attends Norton Public Schools pursuant to school choice, NPS is a “program school” for purposes of 603 CMR 28.10(6). Under that regulation, therefore, NPS has “programmatically and financial responsibility for enrolled students” except that Norton “may bill and receive payment from [Taunton] for the costs of out-of-district placements” it makes for student with special needs who reside in Taunton.<sup>10</sup> Although NPS has not placed Hudson out of district, it may do so if ordered by the BSEA, either as compensation for failing to provide a FAPE for Hudson within the two years preceding the filing of Parent’s *Hearing Request* or because the undersigned Hearing Officer determines that such prospective placement is appropriate to meet Hudson’s transition needs. Alternatively, Norton might decide to propose an out-of-district placement for Hudson in an effort to resolve the pending matter, in which case NPS would be entitled to reimbursement from Taunton. It appears that Parent will be able to receive complete relief in the absence of Taunton as a party, and in fact it is Taunton (the proposed party, rather than the present parties) that bears the risk of prejudice from its absence from the instant proceedings, as 603 CMR 28.10(6)(b) contemplates TPS’s potential financial responsibility for NPS’s decisions regarding Hudson’s placement. Because Norton could bill Taunton for the costs of an out of district placement it makes in connection with these proceedings,<sup>11</sup> Taunton is not so situated that complete relief cannot be granted from Norton, or that the case cannot be disposed of in its absence. As such, although Taunton may ultimately become financially involved in this matter, at this stage it is not a necessary party under Rule I(J).

Even so, Taunton may elect to join the instant matter voluntarily in order to be heard on the issue of financial responsibility for an out-of-district placement made by Norton in its absence, in which case TPS may file an assented-to *Motion to Join*.

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<sup>8</sup> See M.L.G. c. 76, § 12B.

<sup>9</sup> 603 CMR 28.10(6)(b).

<sup>10</sup> See *id.*

<sup>11</sup> In its *Motion to Dismiss*, Taunton argues that any out-of-district placement the BSEA may award would be in the form of compensatory services for Norton’s denial of FAPE, and therefore such placement would be Norton’s financial responsibility. I explicitly decline to address this question at this early stage in the proceedings.

CONCLUSION

For the reasons discussed above, upon consideration of the documents submitted by the parties and the arguments made, I find that Taunton is not a necessary party to this appeal. Taunton Public Schools' *Motion to Dismiss Itself as a Party to Parent's Hearing Request* is hereby ALLOWED *without prejudice*.

**ORDER**

Taunton Public School's *Motion to Dismiss Itself as a Party* to this appeal is ALLOWED.

Pursuant to Norton's assented-to request, Parent's *Amended Hearing Request* will proceed to hearing on the dates agreed to by the parties and established in the Order dated July 20, 2018.

The Hearing will take place September 20 and 24, 2018.

By the Hearing Officer:

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Amy M. Reichbach  
Dated: August 16, 2018