

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

IN RE KHALIL¹

&

BSEA #1901552

NEWTON PUBLIC SCHOOLS

RULING ON NEWTON PUBLIC SCHOOLS' MOTION TO JOIN
MEDFORD PUBLIC SCHOOLS

This matter comes before the Bureau of Special Education Appeals (BSEA) on the Motion of the Newton Public Schools to join the Medford Public Schools. The following facts, rules and arguments are pertinent to the resolution of this Motion.

FACTUAL BACKGROUND²

1. Khalil is a 16 year old who has been found eligible for special education services.
2. Khalil's mother has at all relevant times lived in Newton, MA.
3. Khalil's father has at all relevant times lived in Medford, MA.
4. Pursuant to a 2006 separation agreement and divorce, Khalil's parents share equal physical and legal custody.
5. Since July of 2016 Khalil has lived at times with each parent and in residential schools and residential treatment centers.
6. Since July 2016 both Parents have attended Team meetings concerning Khalil and have participated equally in educational decision-making.
7. Representatives of Medford Public Schools were invited to, and attended, Team meetings conducted by Newton Public Schools.

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

²The facts asserted by school districts and the DESE in their submissions are in dispute and subject to proof at hearing. For the purposes of this Motion only, I recite the limited pertinent facts which are necessary to decide this Motion and which favor the broadest possible available relief for the Student consistent with 603 CMR 28.00 and the Rules of the BSEA.

8. Since July 2016 the Parents rejected IEPs developed by Newton and unilaterally placed Khalil in a series of out-of-state residential educational and treatment facilities.

9. Khalil is currently attending the Winchendon School, a private, non-special education, boarding school in Massachusetts.

10. On August 8, 2018 the Parents jointly requested a BSEA Hearing seeking a determination that the IEPs proposed by Newton for the 2017-2018 and 2018-2019 school years were not reasonably calculated to provide a free appropriate public education to Khalil and requesting reimbursement for Khalil's unilateral residential placements at Shortridge Academy in New Hampshire and the Winchendon School, both independent, private boarding schools not approved by the Commonwealth of Massachusetts to provide special education services.

11. On October 25, 2018 Newton filed a Motion to Join Medford, asserting that because Medford would be fiscally responsible for 50 percent of the cost of any out-of-district placement approved by the BSEA, its participation in the Hearing process is necessary.

12. Medford filed an Opposition to Joinder on November 19, 2018 asserting that Khalil never "lived" in Medford and that its limited involvement would, therefore, not expose it to financial responsibility under 603 CMR 28.10 (2).

13. The Parties agreed to submit a request for an LEA assignment to DESE. On December 6, 2018 DESE declined to make an assignment, reasoning that the BSEA must first determine whether the IEPs proffered by Newton were appropriate for Khalil and, if not, whether his Parents were/are entitled to reimbursement for the unilateral educational placements they made for the 2017-2018 and 2018-2019 school years, before the applicable residency and fiscal responsibility regulation(s) could be determined.

LEGAL FRAMEWORK

BSEA Hearing Rule 1J provides for involuntary joinder of a party to a BSEA proceeding when complete relief cannot be granted among the existing parties, or when the proposed party has an interest in the matter and is so situated that the dispute cannot be disposed of in its absence. Factors to be considered in determining whether to join a party are:

- (1) the risk of prejudice to the present parties in the absence of the proposed party;
- (2) the range of alternatives for fashioning relief;
- (3) the inadequacy of a judgment entered in the proposed party's absence; and
- (4) the existence of an alternative forum to resolve the issues.

Every joinder determination is unique and highly fact dependent.

DISCUSSION

It is unusual, when the residential history of the student and parents is known and is not particularly complicated, for a joinder dispute between school districts to reach the BSEA. In this matter it is clear that both Parents participated in educational decision-making for Khalil. There does not appear to be parental conflict in that regard. It is also clear that the Parents' ongoing shared physical and legal custodial arrangement remained in place throughout the course of multiple out-of-home placements for Khalil during the past several years. Both the Mother's district, Newton, and the Father's district, Medford, were aware of the Parents' unilateral, out-of-district, placements for Khalil. Now the Parents are seeking financial redress for their out-of-pocket educational expenses from Newton, the Mother's school district.

If, at Hearing, Newton's proffered IEPs were to be found wanting, and the Parents were to prove both that Khalil was/is entitled to a residential special education program not offered by Newton and that the placement(s) the Parents selected for him were appropriate, Medford could be deemed fiscally responsible for half the demonstrated costs of the placement(s). The potential for a judgment of this nature persuades me that Medford's participation in the administrative hearing is necessary on both substantive evidentiary grounds and procedural/legal ones.

Furthermore, it would do a disservice to the present Parties were the relief requested by the Parents to be found appropriate by the BSEA in one proceeding, only to have those findings later challenged, and perhaps set aside, in another proceeding due to Medford's lack of participation in this one. It is a more efficient use of the resources of all parties, and of the BSEA, to address all pertinent factual and legal issues relating to the Parents' IDEA-related claims in one administrative proceeding.

Therefore, based on the facts recited above and the applicable Joinder rules, I find that Medford should be joined as necessary party to this appeal because:

1. The present parties risk reasonably foreseeable prejudice in the form of additional BSEA, DESE and/or appellate proceedings if Medford does not fully participate in this appeal;
2. Medford's participation in this BSEA proceeding potentially expands the range of options for relief, if warranted;
3. Any potential financial relief awarded to the Parents in this matter could be delayed, denied, or diminished in the absence of Medford; and
4. DESE, which operates the only alternate administrative forum authorized to address residence disputes involving families and school districts, has declined to take up this matter.

ORDER

The Motion of the Newton Public Schools to Join the Medford Public Schools is GRANTED.

By the Hearing Officer

Lindsay Byrne
Dated: January 8, 2019