

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

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

BSEA #1904571

**RULING ON NEW BEDFORD 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 New Bedford Public Schools (New Bedford or “the District”) in connection with a Request for Hearing filed against the District by Kayden’s parents on November 28, 2018. In their *Hearing Request*, Parents challenged New Bedford’s determination that Kayden is ineligible for special education and requested that the District fund a therapeutic residential placement for him. The Hearing was scheduled for January 2, 2019. On December 20, 2018, the parties filed a joint request to postpone the Hearing<sup>2</sup> to permit them to continue working together to address the issues underlying the *Hearing Request*, and on December 24, 2018, the undersigned Hearing Officer issued an Order allowing this request. The matter was continued to March 1, 2019 for a Pre-Hearing Conference, with Hearing dates of March 20, 21, and 22, 2019. On January 3, 2019, New Bedford filed its *Motion to Join the Massachusetts Department of Children and Families* (DCF) (“Motion to Join”). On January 25, 2019, DCF filed an *Opposition* to the District’s *Motion to Join* (“Opposition”). Parents filed no response. As no party requested a hearing on the motion, and as neither testimony nor oral argument would 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, 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. Kayden is a seventeen (17) year old eleventh grade student within the New Bedford Public Schools. (*Motion to Join*)
2. Kayden has been diagnosed with Reactive Attachment Disorder and Borderline Personality Disorder. (*Motion to Join*)
3. DCF currently has temporary custody of Kayden. (*Motion to Join; Opposition*)

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

<sup>2</sup>New Bedford requested, and was allowed over Parents’ objection, an extension to file its Response to Parents’ *Hearing Request*. The District filed its Response on December 19, 2018.

4. Between approximately June 2017 and April 2018, Kayden was in foster care, placed with relatives at first then removed from that home by DCF and placed in another foster home. (*Motion to Join*)
5. After they regained custody of Kayden on or about April 2018, his adoptive parents filed a *Child Requiring Assistance* petition in the Juvenile Court and Kayden was again placed in DCF custody. Between May 7, 2018 and September 6, 2018, Kayden was placed in or attended several different programs, including drug treatment and hospital-based programs. (*Motion to Join*)
6. On or about August 27, 2018, Parents and DCF requested that the District conduct an initial evaluation of Kayden. The District proposed psychological, social emotional, and academic achievement testing. Parents requested that the evaluation be conducted at and/or by Stevens Treatment Center (“Stevens”). (*Motion to Join*)
7. On or about September 6, 2018, DCF removed Kayden from his residential placement at the Castle Program in Brockton and placed him at Stevens for the period of his initial evaluation. DCF funded both the residential and educational components of the placement. (*Motion to Join*)
8. Following the District’s psychological evaluation of Kayden, which occurred on or about October 23, 2018, the Team met on November 14, 2018 and found him ineligible for special education services. (*Motion to Join*)
9. DCF notified Parents, Stevens, and the District that it would no longer fund Kayden’s residential placement at Stevens. DCF requested that Stevens move Kayden to a group home level of care and that Kayden attend the New Bedford Public Schools. (*Motion for Joinder*)
10. On November 28, 2018, Parents filed a *Hearing Request* against New Bedford Public Schools seeking residential placement of Kayden at Stevens.

## 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 to Join 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.”<sup>3</sup>

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;<sup>4</sup> and if so, whether joinder of DCF is in accordance with the agency’s rules, regulations, and policies.<sup>5</sup>

## ANALYSIS

The District argues in its Motion that DCF is a necessary party in this matter because Kayden is eligible for, has received, and continues to receive, DCF services; and because DCF initially placed him, and fully funded his placement, at Stevens, for non-educational reasons. Moreover Kayden has been in the care and custody of DCF since at least May 7, 2018, and as such DCF is “obligated and responsible for providing [him] with an appropriate environment that enables him to receive educational services.” Finally, administrative efficiency would be served by joining DCF at this time, and failure to do so would pose a risk of substantial prejudice to the District.

DCF, in turn, asserts that to the extent the BSEA were to find that placement of Kayden at Stevens is necessary to secure a free appropriate public education (FAPE), that placement

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<sup>3</sup>M.G.L. c. 71B, § 3; *see* 603 CMR 28.08(3) (corresponding regulations).

<sup>4</sup>BSEA *Hearing Rule* I(J).

<sup>5</sup>M.G.L. c. 71B, § 3.

would be wholly New Bedford's responsibility. Moreover DCF is currently providing placement for Kayden in congregate care at Stevens and, as such, an Order from the BSEA for such placement is unnecessary. Finally, it is DCF, rather than the BSEA, that makes placement decisions for a child in its custody in that child's best interest. For these reasons, DCF argues, it is not a necessary party to these proceedings.

At this point, I have little information regarding Kayden and his needs, educational or otherwise. I may, upon considering all of the evidence in the case on the merits, find that the District determined correctly that Kayden is ineligible for special education services, or that he is eligible but requires nothing more than in-district services. 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,<sup>6</sup> voluntary or otherwise.<sup>7</sup> As Kayden 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, Parents assert that Kayden is eligible for special education services and requires residential placement. The District argues that to the extent Kayden requires residential placement, such placement is for non-educational reasons and as such, would be 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 placement and/or services for Kayden, the District bears the risk of prejudice if I do not join the agency. For these reasons, I find that DCF is a necessary party to this matter.

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<sup>6</sup>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.")

<sup>7</sup>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).

**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 March 1, 2019 at the Offices of the BSEA, 14 Summer St., 4<sup>th</sup> Floor, Malden.
- 3) The Hearing will take place on March 20, 21, and 22, 2019, also at the Offices of the BSEA.

By the Hearing Officer:

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Amy M. Reichbach  
Dated: January 31, 2019