

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

In Re: Nalini¹

&

BSEA #1906261

Nashoba Regional School District

RULING ON SCHOOL'S MOTION TO JOIN
THE DEPARTMENT OF MENTAL HEALTH

This matter comes before the Hearing Officer pursuant to the Parents' January 31, 2010 request for a hearing to resolve a disagreement with the Nashoba Regional School District (hereinafter "Nashoba") concerning the appropriate level of and placement for special education services for Nalini. On February 19, 2019 Nashoba filed a Motion to Join the Department of Mental Health (hereinafter "DMH"). The Parents do not oppose the School's Motion. Arguments on the Motion for, and the Opposition to, Joinder were heard at a prehearing conference on February 28, 2019. A Hearing is scheduled to take place on March 21, 2019.

FACTUAL BACKGROUND

Though not fully developed the parties agree to and/or the administrative record discloses the following pertinent facts:

1. Nalini is a fourteen year old resident of the Nashoba Regional School District. Her eligibility to receive special education services is not in dispute.
2. During the last five years Nalini has attended various in-district and collaborative special education day programs designed to address her special educational needs. She also experienced several psychiatric hospitalizations during this time. At one point, DMH deemed Nalini eligible for services and provided in-home therapeutic supports.
3. Between March 2017 and May 2018 the Parents unilaterally placed Nalini in an out-of-state residential therapeutic school. DMH ceased providing services to Nalini during this time as she was not resident in Massachusetts.

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

4. Nalini returned to Massachusetts in May 2018 and briefly attended a therapeutic, special education day program. DMH was advised of Nalini's return to the service area and her need for ongoing therapeutic support.
5. Nalini was placed in a CBAT between August 28, 2018 and October 2, 2018. On her discharge from the CBAT, DMH supported Nalini's transition to a CIP residential program for an extended evaluation and Nashoba proposed an extended educational evaluation at the adjacent Dearborn STEP program. Nalini attended the DMH sponsored residential component, CIP, until October 29, 2018 but did not meaningfully participate in the special education day program/evaluation offered through the STEP program.
6. On October 29, 2018 the Parents unilaterally placed Nalini in a partial hospitalization program at Bradley Hospital in Rhode Island. DMH ceased providing services as Nalini was not then present within the Commonwealth.
7. Upon discharge from Bradley Hospital in January 2019 Nalini was placed in a CBAT at Franciscan Hospital in Boston. She is likely to be discharged from that placement in early March 2019.
8. The Parents signed consent for DMH services on February 27, 2019. DMH intends to provide appropriate evaluative, assessment and services planning to Nalini.
9. Nashoba is proposing a day therapeutic educational placement for Nalini and seeks to ensure that DMH will support that placement with a connected therapeutic group home residence component.
10. The Parents assert that Nalini needs placement in an integrated, highly specialized, therapeutic residential school program.

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.

When the proposed party is a state agency, the Hearing Officer must also consider whether an exercise of jurisdiction over the agency is, in the language of the applicable statute,

“in accordance with” that agency’s own legislative mission and administrative regulations. M.G.L. c 71 §. Further the Hearing Officer must determine whether the services, program, personnel or expertise unique to that agency are a necessary “addition” to the special education program proposed for a student by the school district such that without them the student cannot receive a free appropriate public education. See also: 20 U.S.C. § 1412 (12); 603 CMR 28.08 (3); *Silver Lake R.S.D. & Ulrike*, 18 MSER 186 (2012); *Berkshire Hills R.S.D. & Gale*, 22 MSER 45 (2016). Every joinder determination is unique and highly fact dependent.

DISCUSSION

The Parents initially requested a hearing to determine whether placement in a therapeutic residential school is necessary in order for Nalini to receive a free appropriate public education. The Parties agree that Nalini requires an out-of-home placement at this time. The School contends, however, that Nalini needs an out-of-home placement for medical and/or therapeutic reasons rather than for educational ones. It asserts that Nalini could make effective educational progress in a substantially separate therapeutic day program. The School argues that the implementation of intensive, short term, residential therapeutic services, such as those available in a DMH sponsored group living situation, which could lead seamlessly to intensive in-home supports, are necessary and appropriate “additional” services uniquely within the expertise of DMH. It further argues that the combination of school day educational programming through Nashoba and intensive therapeutic interventions and programming available through a DMH group home, is the least restrictive, potentially effective, placement appropriate to meet Nalini’s significant needs.

In opposition to Joinder DMH argues that it has not had the necessary time to determine Nalini’s eligibility and to plan for any DMH services, much less the intensive supports the School argues are required to support Nalini’s placement in a special education day placement.

After careful consideration of the pertinent undisputed facts I find that the involuntary joinder of DMH to this appeal is warranted. The skeleton history available in this limited record supports the views of the School and the Parents that without residential supports that are intensely therapeutic Nalini cannot access the special education services for which she is eligible. The home and community-based therapeutic services historically provided to Nalini and her family by DMH, as well as more intensive supports requested by the School that could potentially be provided by DMH, are consistent with the DMH mission, statute and regulations. The requested DMH services would be an indispensable “addition” to the special education day program proposed by Nashoba in that the BSEA would be constrained to evaluate the placement’s educational appropriateness for Nalini without reference to available, supplemental, therapeutic services within the control of DMH that could support her access to it.

I am not persuaded by the argument of DMH that it cannot be joined until it has formally determined eligibility in this case and has worked through the service planning process. Nalini is well known to DMH. Her parents have consented to DMH evaluations and services. Gaps in Nalini’s receipt of DMH services have been largely due to her presence, at those times, outside Massachusetts for the express purpose of receiving appropriate mental health treatment and services. There is no indication that Nalini has at any time failed to meet

the clinical criteria for DMH services. There is no indication from any recent event, placement, evaluation or recommendation that Nalini's circumstances have changed so significantly for the better as to call into question her continuing need for intensive mental health supports and interventions consistent with DMH regulations. There is, at most, a *de minimus* risk of prejudice to DMH as an unwilling participant in this BSEA matter.² On the other hand, the risk of prejudice to the positions of the School and Parents in the absence of DMH are real and significant as DMH holds the key to the LRE³

The BSEA is the only administrative forum in Massachusetts charged with determining and enforcing a disabled student's right to a free, appropriate public education under 20 U.S.C. 1400 *et seq.* and M.G.L.c71B. Should this matter proceed to Hearing, one potential determination, that the special education day programming proposed by Nashoba is appropriate for Nalini, would nevertheless result in an inadequate judgment were the necessary means for Nalini to access that program, available solely through DMH, be absent.

Therefore, after careful consideration of the unique facts of this matter, and of the applicable law, I find that DMH is a necessary party to this administrative appeal process. Complete relief cannot be afforded to the other Parties without the active participation of DMH. The services, programs, personnel and expertise uniquely within the control of DMH are potentially a necessary addition to, and, it could be reasonably argued, may well permit Nalini to assess and access the free, appropriate public education to which she is entitled.

ORDER

The criteria for involuntary joinder under BSEA Rule 1J have been met. The School's Motion to Join DMH is GRANTED.

By the Hearing Officer

Lindsay Byrne
Dated: March 11, 2019

²The only risk for DMH is an Order directing compliance with obligations imposed by relevant statutes and court Orders to which it is already subject.

³"LRE" is shorthand for Least Restrictive Environment", a key educational access right accorded to students with disabilities under the IDEA and M.G.L. c. 71B.