

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

**In Re:** Student v.  
Brookline Public Schools

**BSEA #2005734**

**RULING ON BROOKLINE PUBLIC SCHOOLS' MOTION TO JOIN  
BOSTON PUBLIC SCHOOL**

Parents Requested a Hearing in the above-referenced matter on December 30, 2019. Parents, who are divorced and share custody, live in Boston and Brookline.

On February 4, 2020, Brookline Public Schools (Brookline) filed a Motion to Join Boston Public Schools (Boston) in the above-referenced matter, arguing that Student was a resident of both Brookline and Boston as Student lives with both Parents during the week.

On February 13, 2020, Boston filed an Opposition to Brookline's Joinder Motion. Boston asserted that the instant dispute involving the appropriateness of the program delivered by Brookline was between Brookline and Parents only.

According to Boston if Brookline prevails in showing that its IEP and placement offers Student a FAPE, then, Brookline is solely responsible for the programmatic and financial implementation of Student's IEP. Boston further asserts that 603 CMR 28.10(2)(a)(2) is inapplicable and lastly asserts that Boston is ready to fund and administer any special education services deemed appropriate by the BSEA. As such, Boston argues that it is not a necessary party in this action.

**Facts:**

The facts appearing herein are considered to be true for purposes of this Ruling only.

1. Student is a minor who receives special education services in a substantially separate program in Brookline High School. Student's eligibility and need for special education services is not at issue.
2. Student's parents are divorced and live separately, one in Brookline and the other in Boston.
3. Student resides with both parents on different school nights during the week per a recent home assessment/ observation conducted by Brookline.
4. On or about November of 2019, Brookline offered Student continued participation in its substantially separate program at Brookline High School for the period from November 5, 2019 to November 4, 2020.

5. On or about December 6, 2019, Parents rejected the proposed IEP and placement and instead requested public funding for an out-of-district residential therapeutic placement for Student.
6. Brookline asserts that it is (and has) offered Student a free appropriate public education (FAPE) in the district's program.
7. Student is not enrolled in Boston and has never attended school in Boston.

**Legal Standard for Joinder:**

Rule 1(J). of the *Hearing Rules for Special Education Appeals* (Hearing Rules) allows a Hearing Officer to join a party upon written request, in cases where: "complete relief cannot be granted among those who are already parties, or the person 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 their absence." This Rule lists the following factors to be considered in determining whether a person or entity should be joined: "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." *Hearing Rules*, Rule 1(J).

In the instant case, in order to determine whether these criteria are met, the Hearing Officer must consider state special education regulations governing the respective responsibilities of program schools and school districts of residence to special education students, found at 603 CMR 28.10.

**Conclusions:**

Brookline argues that Student spends equal time during the week between Parents' homes which are located in Brookline and Boston respectively. While maintaining that it is offering Student a FAPE in its in-district program, were Parents to prevail at Hearing, and pursuant to the Massachusetts Special Education regulations, both Brookline and Boston would be equally responsible to fund the out-of-district placement. According to Brookline, Boston's absence would preclude granting of complete relief among the current Parties. As such, Brookline argues that Boston is a necessary Party to the instant proceeding and must be joined.

Pursuant to 603 CMR 28.10(2)(a)(2)

When a student who requires an out-of-district placement to implement his or her IEP lives with both of his or her parents during the school year, irrespective of school vacation periods, and the parents live in two different Massachusetts school districts, the school districts where the parents reside shall be equally responsible for fulfilling the requirements of 603 CMR 28.00.

The aforementioned regulation calls for the two school districts to share financial responsibility for funding of an out-of-district placement for a student who resides with both parents during the school year and whose Parents live in different districts. 603 CMR 28.10(2)(a)(2).

Boston argues that it is not a necessary party because if Brookline prevails in showing that its IEP and placement offers Student a FAPE, then, pursuant to 603 CMR 28.01(1)<sup>1</sup> Brookline would be solely programmatically and financially responsible for implementing Student's IEP. Moreover, Boston argues that 603 CMR 28.10(2)(a)(2) is inapplicable because said regulation is only applicable when the Team has proposed and Parents have accepted an IEP offering an out-of-district placement. Since the proposed IEP does not offer out-of-district placement and since Parents have rejected the IEP, Boston argues, the regulation cited by Brookline is inapplicable. Lastly, Boston asserts that it is ready to fund and administer any special education services deemed appropriate by the BSEA and thus, the BSEA may dispose of this matter in its absence.

I find that Brookline is correct that Boston has an interest relating to the subject matter of the instant dispute because were Parents to prevail at Hearing, Boston may be partially financially responsible for Student's placement. A Decision favorable to Parents would result in Brookline having to issue an IEP calling for an out-of-district placement, which Parents would presumably accept. Given that Student resides in both districts (Brookline and Boston), Boston would share financial responsibility for Student's out-of-district placement.

Boston's argument that it would willingly abide by any determination made by the BSEA rendering its joinder unnecessary is not persuasive because it is not possible to ascertain what the extent of its financial responsibility may be and how that might impact its position in this regard in the future. Therefore, I find that in order to dispose of this matter, Boston must be joined as a necessary Party to this proceeding. If Boston continues to believe that it is not a necessary party, it may opt to have limited participation, or not participate at all, in the Hearing.

**ORDER:**

Brookline's Motion to Join Boston is hereby **GRANTED**. Boston is joined as a necessary party to this proceeding.

So Ordered by the Hearing Officer,

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Rosa I. Figueroa

Dated: February 25, 2020

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<sup>1</sup> "School districts shall be programmatically and financially responsible for eligible students based on residency and enrollment" 603 CMR 28.01(1).