

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals
Bureau of Special Education Appeals

In Re: Student v.
Acton-Boxborough Regional School District

BSEA # 2103253

RULING ON PARENTS' MOTION TO JOIN

On January 5, 2021, Parents in the above-referenced matter filed a Motion for Joinder of the Town of Acton as a Party (Motion), arguing that complete relief cannot be granted in its absence. According to Parents, their Hearing Request alleges wrongdoing on the part of the Town of Acton (Acton or Town) and specifically, the Acton Police Department (Police Department) and its School Resource Officer (SRO or Officer). Parents argue that the Bureau of Special Education Appeals (BSEA) has jurisdiction over claims against the Town of Acton, as the District is acting as an agent of the Town in this matter, and its actions interfered with provision of a FAPE to the Student.

Parents assert that joinder of Acton is necessary because the absence of Acton: (a) would limit the range of alternatives for fashioning a remedy, resulting in an inadequate judgment by this forum in light of Student's request for damages and to exhaust his administrative remedies so that he can proceed with his civil claims against the District and its employees or agents; and (b) would compromise the development of a full, factual record that includes all issues and claims against the District and Acton, since there is no other administrative forum to do this.¹

On January 12, 2021, Acton filed an Opposition to Parents' Motion for Joinder of the Town of Acton as a Party. Acton argued that joinder should be denied because the BSEA lacks jurisdiction over many of Parents' claims (which are the subject of a pending Partial Motion to Dismiss awaiting oral arguments) and, as a matter of law, because the Town of Acton and its subsidiary, the Police Department, are not responsible for provision of special education services and or Section 504 educational accommodations.

On January 21, 2021, the Town of Acton joined Acton Public Schools in the Opposition to Parents' Motion for Joinder of the Town of Acton as a Party.

Parents' Position:

Parents assert that this matter involves allegations of a "continuing series of acts involving racial, ELL and disability discrimination, and retaliation by the employees/staff/officials of

¹ I note that the five arguments appearing in Parents' Motion were consolidated into the two delineated here.

the School District and the Acton Police Department in the aftermath of a series of incidents culminating on January 9, 2020 affecting the family, after which Student was retaliated against, discriminated against, and was intimidated by the District and, at the District's request, the Acton Police."² Parents assert that when the police informed Student of the incident involving his brother (which resulted in hospitalization of the sibling and Mother being arrested), Student was traumatized. As such, Parents' claims primarily involve Student's sibling, who currently attends the same school. Parents further assert that Student continued to be traumatized when, after he stopped attending school, a police officer was sent to Student's home at the District's request as part of a non-criminal truancy matter. Parents reason that the District is acting as the Town's agent in delivering a FAPE to Student, and since in their view Student was denied a FAPE, the Town must be joined.

Parents further assert that under the Memorandum of Understanding between the District and the Police, a School Resource Officer (SRO) must be assigned to the District.³ The SRO remains under the supervision and control of the Police, and is not to serve "in place of a licensed school mental health professionals" and "shall not use police powers to address traditional school discipline issues, including non-violent disruptive behavior." The Police and the District must establish standard operating procedures for the SRO. As such, Parents note that the District and the Police Department are "intricately tied together in this SRO program."⁴

Lastly, Parents argue that by joining Acton, a full and complete record may be developed at the administrative level, which record may be of great value to the Court.⁵

District's Position:

The District argues that the instant case came before the BSEA on Parents' allegations of "discrimination on the basis of race, nationality and disability and that the District violated the student's right to a free appropriate public education (FAPE)" for which Parents seek "monetary damages in the form of punitive, and compensatory services, as well as findings related to exhaustion of remedies."

In response, the District has filed a Partial Motion to Dismiss those portions of Parents' claims that the District views as falling outside the jurisdiction of the BSEA. The District argues that joinder of Acton must be denied because the BSEA lacks subject matter jurisdiction over Parents' claims against Acton and its subsidiaries, and because Acton and its subsidiary (the Police Department) is not responsible for the provision of special education or section 504 accommodations to Student. Therefore, the District asserts that as a matter of law, joinder should be denied.

² Parents' claims primarily involve Student's sibling, who attends the same school.

³ See M.G.L. c.71 §37P.

⁴ The Commissioner of the Department of Elementary and Secondary Education (DESE) may waive the SRO requirement but according to Parents no such waiver has been issued in the instant matter.

⁵ Parents rely on *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 61 (1st Cir. 2002); *Doe v. Mashpee Pub. Schs.*, 29 Mass. L. Rep. 573 *7(2011).

Oral arguments on the Partial Motion to Dismiss are pending as is a ruling delineating the scope of the Hearing.

Facts:

1. Student is a twelve-year-old student who attended the Merriam School, which is part of the Acton-Boxborough Regional School District, through the end of January 2020.
2. Student has been found eligible to receive special education services under the categories of health disability to address ADHD, a specific learning disability (Reading), physical impairment for which he receives occupational therapy and communication.
3. On January 9, 2020, an incident at school involving Student's sibling and Mother resulted in Student's sibling being hospitalized and Mother being arrested on assault and battery charges.
4. Student did not attend school between January 9 and January 17, 2020.
5. On January 17, 2020, a police officer went to Student's home on a truancy call at the request of the District.
6. The District has not contracted with the Town of Acton or the Acton Police Department to provide educational services and/or accommodations to any student including Student.
7. The District does not employ any police officers, including the SROs.
8. The Town of Acton, through its Police Department, employs police officers including SROs.
9. SROs employed by the Acton Police Department are subject to the exclusive administration, supervision and control of the Acton Police Department (SE-A).

Findings and Conclusions:

Legal Standards:

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 judgement entered in the proposed party's absence; and the existence of an alternative forum to resolve the issues." *Hearing Rules*, Rule 1(J).

In order to determine whether the criteria described above is met in a given case, a BSEA Hearing Officer must consider, among other factors, federal and state special education laws and regulations governing the BSEA and its jurisdictional authority. 20 USC §1415(b)(6); M.G.L. c.71B §2A; 34 CFR 300.507(a)(1); 603 CMR 28.08 (3).

Specifically, 603 CMR 28.08 (3) delineates the limited jurisdiction conferred on the BSEA regarding the types of controversies that may be entertained and those parties among whom those disputes may be heard. 603 CMR 28.28(3)(a) states that the BSEA may hear controversies involving,

... the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities. A parent of a student with a disability may also request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973, as set forth in 34 CFR §§104-31-104-39.

Consistent with 603 CMR 28.08(3), the jurisdictional authority of the BSEA pursuant to G.L. c. 71B §2A to resolve special education related disputes as described above may be exercised “among school districts, private schools, parents and state agencies”. [Emphasis supplied]. Said regulation goes on to state that the Bureau of Special Education Appeals Hearing Officer may enter determinations 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 Developmental Disabilities, the Department of Mental Health the Department of Public Health, or any other state agency or program, in addition to the IEP services to be provided by the school district.” 603 CMR 28.8(3).

In the context of special education, school district is defined as

[t]he school department of a city or town, a regional school district, an independent vocational school or a vocational school or agricultural school operated by a county. G.L. c. 70 §2(a).⁶

The aforementioned provision does not include cities, towns or local government/ subsidiaries of those entities, including the police department.

Conclusion:

It is clear that the above regulations limit the jurisdictional authority of the BSEA to public school districts, private schools, and state agencies directly responsible for implementation of a FAPE, pursuant to the IDEA, M.G.L. 71B and Section 504.

⁶ See also, 603 CMR 28.02(8) defining District or school district as “a Massachusetts municipal school department or regional school district, acting through its school committee or superintendent of schools; a county agricultural school, acting through its board of trustees or superintendent/ director; and any other Massachusetts public school established by statute or charter, acting through its governing board or director. School districts have programmatic and financial responsibility in accordance with the procedures of 603 CMR 28.10.”

Careful reading of 603 CMR 28.08(3) shows that the rule considers only entities uniquely charged with the responsibility of providing educational services to a student and/or directly supporting the provision of said educational services⁷ so that the eligible student may receive a FAPE through the proposed and accepted IEP. Such is the case with State agencies specifically mentioned in 603 CMR 28.08(3). See *Lowell Public Schools*, 107 LRP 655543 (2007).

The jurisdictional authority of the BSEA is limited. I can find nothing in the authorizing law or regulations, granting the BSEA jurisdiction over towns and/ or police departments. A town is not an agency within the context of M.G.L. c.71B §2A or 603 CMR 28.28(3). Similarly, I find no language in the IDEA or the Massachusetts Special Education laws and regulations intended to extend such broad grant of authority to the BSEA, a forum with otherwise limited jurisdiction.

The District is persuasive that Parents’ argument that the Town of Acton is a necessary party is misguided. As noted by my sister Hearing Officer Catherine Putney-Yaceshyn in *In Re: Springfield Public Schools, Ruling on Partial Motion to Dismiss*, BSEA #1704091 (2017), “even if the BSEA is required to find acts that ultimately will be used in a bid for relief that the BSEA cannot grant, the hearing officer must do so within the confines of the BSEA’s express authority, namely application of the IDEA, MGL c. 71B and/ or Section 504 .”⁸

Parents argument that the relationship between the Police Department and the District as well as the truancy call in January 2020, render the Town of Acton/Police Department a necessary Party is unpersuasive. Pursuant to the regulations above, an agency may only be joined in a BSEA proceeding if its presence, consistent with its own rules and regulations, is necessary for Student to access a FAPE. In the instant case, Student’s educational needs can

⁷ This regulation further limits participation by the pertinent state agency regarding provision of services in addition to the IEP services to be provided by the school district, to those consistent with the rules, regulations and policies of each agency.

⁸ See *Rulings on Motions to Dismiss in Noel & Holyoke Public Schools*, BSEA No. 1606558 (Byrne, August 29, 2016); *Oriel & Holyoke Public Schools*, BSEA No. 1606711 (Byrne, August 29, 2016); and cases cited in both of these rulings, including *In Re: Springfield Public Schools & Xylia*, 18 MSER 373 (Byrne, 2012), discussing the jurisdiction of the BSEA. See also, *Fry v. Napoleon Community Schools*, 580 U.S. ___ (2017).

be fully addressed by the current parties, in the absence of the Town of Acton and the Police Department.⁹

Furthermore, while Section 504 does in fact impose certain requirements on entities receiving federal funding for the operation of public elementary or secondary programs or activities that provide a FAPE to qualified students, the Town of Acton does not operate any such program or activity for its special education eligible students, nor is it obligated to do so. Therefore, there can be no finding that the Town of Acton violated Student's rights under Section 504. The District is solely responsible to assure that Student's special education needs pursuant to Section 504 are met.

Lastly, the services rendered by SROs are part of general education and not unique to special education. In this too the District is correct that the BSEA has long held that it has no jurisdiction over regular education matters such as this. Moreover, the BSEA lacks jurisdiction to order relief for alleged violations of Memorandum of Understandings between school districts, cities and police departments, as it would also lack jurisdiction to order remedies over violations of internal school policies, procedures or student handbooks.¹⁰

I therefore find that the grant of authority conferred upon the BSEA by the above-discussed statutes and regulations does not encompass jurisdiction over the Town of Acton or the Police Department, and that joinder of the Town or the Police Department is inappropriate and unnecessary to the determination of whether Student was denied a FAPE, the ultimate issue before this forum. Any relevant information regarding the alleged events and truancy intervention by the Police Department involving Student may be obtained through the testimony of witnesses. As such, Parents' Motion must be DENIED.

Order:

⁹ See generally *M.C. By & Through Mrs. C. v. Voluntown Bd. of Educ.*, 178 F.R.D. 367, 369–70 (D. Conn. 1998). In this case the local school board sought to join the state board and the Court found joinder unnecessary reasoning that:

While an absent party may be considered a necessary party in order to avoid having a court render a hollow judgment among the extant parties, Rule 19(a)(1) does not require joinder for the universal resolution of all related claims. *Shelton v. Exxon Corp.*, 843 F.2d 212, 218 (5th Cir.1988); see *370 *Arkwright–Boston Mfrs. Mut. Ins., Co. v. City of New York*, 762 F.2d 205, 209 (2d Cir.1985) (interpreting the complete relief clause narrowly and stating that complete relief means only “ ‘relief as between the persons already parties, and not as between a party and the absent person whose joinder is sought’ ”) (citation omitted). Here, the Local Board could seek full or partial reimbursement from the State Board for any tuition or tutoring costs it may be required to pay. This does not mean, however, that the reimbursement issue must be resolved in the present litigation.

Any determination by the BSEA would not be inconsistent with additional claims outside its purview which may be raised later against additional parties.

¹⁰ *Rochester Regional School District*, BSEA #1806205 (Byrne, 2018)(“The BSEA is not the proper forum to complain that a school failed to follow the policies and procedures set out in a student handbook”)(citations omitted).

For the reasons stated above, Parents' Motion for Joinder of the Town of Acton is hereby **DENIED**.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: January 21, 2021