

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

In Re: South Shore Regional Vocational Technical School District v. Student

BSEA #2108266

RULING ON PARENTS' REQUEST FOR MOTION TO JOIN

This Ruling is issued in response to *Parents' Request for Motion to Join (Motion)* in the above-referenced matter. In their *Motion*, Parents indicate that Student resides within the Whitman-Hanson Regional School District ("Whitman-Hanson"); that the IEP proposed by Whitman-Hanson on June 5, 2020 is not reasonably calculated to provide a FAPE; and that Whitman-Hanson is responsible for funding an appropriate setting that addresses Student's unique needs and his status as a student accepted into a vocational education program desiring an education in horticulture/landscaping.

On April 13, 2021, Whitman-Hanson filed the *Whitman-Hanson Regional School District's Opposition to Parents' Motion to Join/Response to South Shore Vocational Technical High School's Hearing Request*, asserting that it is not Student's LEA and is not responsible for making placement decisions for him; since the basis of the hearing request and the parents' response is an issue of placement, and Whitman-Hanson cannot be ordered to make a placement for Student, it is not a necessary party to the resolution of this dispute.

For the reasons set forth below, Parents' *Motion* is hereby GRANTED.

Procedural History:

On March 25, 2021, South Shore Regional Vocational Technical School District ("South Shore") filed a Hearing Request with the BSEA seeking an order that its proposed IEP and placement for Student (dated 10/26/2020-10/25/2021, as amended 3/3/2021) (hereinafter, "2020-2021 IEP")¹, is reasonably calculated to provide Student with a free and appropriate public education in the least restrictive environment. Said IEP, proposing a substantially separate program with 1:1 support in the Whitman-Hanson Regional High School, was rejected by Parents on March 4, 2021. In its hearing request, South Shore asserted that Student has not been making effective progress and requires a more restrictive, therapeutic program. South Shore also cited safety concerns regarding Student's continued placement at South Shore.

On April 12, 2021, Parents responded to the Hearing Request, disputing South Shore's allegations of lack of academic progress and safety concerns, as well as the appropriateness of t South Shore's 2020-2021 IEP. Parents also asserted that Student has, in fact, been denied a

¹ South Shore's Hearing Request (Paragraph 1) seeks an order that its "proposed IEP and placement (dated 06/05-2020-06/04/2021, as amended 3/3/3021), which Parent rejected on March 4, 2032" is appropriate. The sentence includes some obvious errors and others that are more obvious upon a review of the remainder of the Hearing Request. In fact, South Shore's proposed IEP is for the period 10/26/2020 to 10/25/2021, as amended on 3/3/2021

FAPE since June 5, 2020 when, at a transition meeting held with South Shore in attendance prior to the start of Student's 9th grade, Whitman-Hanson proposed an IEP for the period 6/5/2020 - 6/4/2021. Parents neither accepted nor rejected that IEP.

In their Response, Parents asked the Hearing Officer to "compel [South Shore] to provide Student FAPE in an education setting that meets his needs and is aligned with his vocational education path." In addition, they asked the Hearing Officer to find that the Whitman-Hanson IEP dated June 5, 2020 was not reasonably calculated to provide Student FAPE and that Whitman-Hanson be held accountable for said denial of FAPE. Last, they requested a finding that South Shore's proposed IEP and placement for the period October 26, 2020 to October 25, 2021, as amended on March 3, 2021 are not reasonably calculated to offer Student a FAPE in the LRE.²

On April 9, 2021, Parents requested a postponement of the initial Hearing Date. Pursuant to a Postponement Order issued on April 12, 2021, the Hearing was scheduled for April 30, 2021.

Facts:

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

1. Student resides in Hanson, Massachusetts with his parents. Hanson is part of the Whitman-Hanson Regional School District.
2. Student currently attends the 9th grade at South Shore, a regional vocational high school program. This is Student's first year at South Shore. He has an interest in horticulture/landscaping.
3. Student is eligible for an IEP under the Autism and Health Impairment disability categories.
4. During Student's 8th grade, he attended a partial inclusion program at Hanson Middle School with 1:1 support across all areas of his school day.
5. In June 2020, Whitman-Hanson developed an IEP (dated 6/5/2020 to 6/4/2021) for Student's 9th grade. South Shore was in attendance at the Team meeting. Parents did not sign the IEP.
6. Student began attending South Shore in the fall of 2020. A new IEP was developed by South Shore on October 26, 2020 and provided, in part, for additional inclusion support.
7. The Team convened on February 11, 2021 to review a recently completed FBA. The report cited two instances of unsafe behavior, directly observed by the evaluating BCBA, demonstrating risk of harm for Student in the school environment.
8. The Team met again on March 3, 2021 to continue development of the IEP and to discuss placement options. Whitman-Hanson was invited and attended the meeting. At that time, the Team recommended a small therapeutic/behavioral, sub-separate program with 1:1 support designed to meet Student's social and emotional needs. Placement was recommended at an in-district program at Whitman-Hanson.

² While Parents' *Response* seeks a finding "that the proposed March 2, 2021 IEP and placement are not reasonably calculated to offer Student a FAPE in the LRE," upon review of the pleadings, it appears that Parents are, in fact, referencing South Shore's proposed IEP and placement for the period October 26, 2020 to October 25, 2021, as amended on March 3, 2021.

9. On March 4, 2021, Parents rejected the proposed placement.

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.”³

In the instant case, in order to determine whether these criteria are met, I must first consider state special education regulations governing program schools. Massachusetts special education regulations include, in their definition of a program school, the school in which the student is enrolled according to the provisions of M.G.L. c. 74 (vocational schools).⁴ The regulations further state that a “program school shall have programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law related to the program school.”⁵ In addition, for vocational schools,

when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type, and shall notify the school district where the student resides within two school days.

1. Upon a determination as in 603 CMR 28.10(6)(a), the program school shall schedule another meeting to determine placement, and shall invite representatives of the school district where the student resides to participate as a member of the placement team pursuant to 603 CMR 28.06(2)(e)(1).
2. The Team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the Team, and if so, the program school shall arrange with the school district where the student resides to deliver such services or develop an appropriate in-district program at the program school for the student.
3. If the placement Team, in accordance with the procedures of 603 CMR 28.06(2)(e), determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of-district day or residential school, depending on the needs of the student. Upon

³ *BSEA Hearing Rules*, Rule 1(J).

⁴ See 603 CMR 28.01(16).

⁵ 603 CMR 28.10(6).

parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility shall return to the school district where the student resides. The school district where the student resides shall implement the placement determination of the Team consistent with the requirements of 603 CMR 28.06(3).⁶

Discussion and Conclusion:

In order to decide whether joinder is appropriate, I must first decide whether complete relief can be granted from South Shore, and whether Whitman-Hanson 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.⁷

As a vocational school, South Shore is considered a "program school" for the purposes of 603 CMR § 28.10(6)(a). Under that regulation, South Shore has "programmatic and financial responsibility for enrolled students", such as Student, who have special education needs except "when the Team determines that the student may need an out-of-district placement" and follows the procedures enumerated by the regulation to shift financial responsibility to "the school district where the student resides."⁸ In the instant matter, Student resides within Whitman-Hanson.

South Shore has followed the process set out by the regulations. Specifically, Student's Team has determined that Student requires a program that South Shore cannot provide. In accordance with 603 CMR § 28.10(6)(a)(2), the Team convened by South Shore considered whether Whitman-Hanson had an in-district program that could provide the services recommended by the Team and determined that it did.

Parents' position is less clear. On the one hand, in their *Response*, Parents ask the Hearing Officer to "compel [South Shore] to provide Student FAPE in an education setting that meets his needs and is aligned with his vocational education path." This suggests that Parents believe that South Shore can be made appropriate. On the other hand, in their *Motion*, Parents assert that Whitman-Hanson is responsible for funding an appropriate setting that addresses Student's unique needs and his status as a student accepted into a vocational education program and desiring an education in horticulture/landscaping. This suggests that Parents may be interested in exploring placement options other than South Shore.⁹ In addition, Parents seek a finding that the Whitman-Hanson IEP dated June 5, 2020 was not reasonably calculated to provide Student FAPE and that Whitman-Hanson be held accountable for said denial of FAPE. |

⁶ 603 CMR 28.10(6)(a).

⁷ BSEA Rule I(J).

⁸ See 603 CMR 28.10(6).

⁹ "Vocational schools" are not special education placements; school districts cannot propose placement at vocational school.

In the instant matter, if, as a result of an evidentiary hearing I were to agree with Parents that South Shore is or can be made appropriate, then Whitman-Hanson is not a necessary party.¹⁰ However, if I were to determine that Student requires an out-of-district program (i.e., cannot be appropriately educated at South Shore) and that the IEP proposed for Student can be implemented at Whitman-Hanson, then Student becomes Whitman-Hanson's responsibility. Similarly, if I were to determine that Student requires an out-of-district program, but that Whitman-Hanson's in-district program cannot meet his needs, then Student would become the responsibility of Whitman-Hanson. Moreover, Parents are clearly requesting some relief from Whitman-Hanson for the IEP dated June 5, 2020, which Parents allege was inappropriate.

Based on the facts recited above and the applicable Joinder Rules, I find that Whitman-Hanson must be joined as a necessary Party to this proceeding as I am unable to grant complete among those who are already parties and Whitman-Hanson has a clear interest relating to the instant case. Specifically, Whitman-Hanson should be joined as a necessary party to this appeal because:

1. The present parties risk reasonably foreseeable prejudice in the form of additional BSEA and/or appellate proceedings if Whitman-Hanson is not a party in this appeal;
2. Whitman-Hanson's party status in this proceeding expands the range of options for relief, if warranted;
3. Any potential relief awarded to the Parents in this matter could be delayed, denied, or diminished in Whitman-Hanson's absence; and
4. There is no alternative forum to resolve the issues currently in dispute.

ORDER:

Parents' Request for Motion to Join is hereby **GRANTED**. Whitman-Hanson is joined as a necessary party to this proceeding.

So Ordered by the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir

Dated: April 28, 2021

¹⁰ See *In Re: Greater New Bedford Regional Voc. Tech.*, BSEA #1308227, 19 MSER 220 (Crane, 2013) ("the resident district's services and placement are not relevant so long as the student is attending the vocational school and does not require an out-of-district placement").