

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

In Re: Student v. Westfield Public Schools

BSEA # 2200773

**RULING ON WESTFIELD PUBLIC SCHOOLS' MOTION TO JOIN
THE DEPARTMENT OF MENTAL HEALTH**

This matter comes before the Hearing Officer on the September 3, 2021 Westfield Public Schools' (Westfield or the District) Motion to Join the Department of Mental Health (Motion). In it, the District argues that the Department of Mental Health (DMH) must be joined as a necessary party in the above-entitled action. Parents assented to the Motion. On September 16, 2021, DMH filed an Opposition to Motion to Join Department of Mental Health (Opposition).

The parties did not request a hearing on the Motion, and I find that a hearing is not needed because it would not likely advance my understanding of the issues.¹

For the reasons set forth below, the District's Motion is hereby GRANTED.

RELEVANT FACTS² AND PROCEDURAL HISTORY:

1. Student is a 14-year-old boy who was adopted by Parents at a young age. Student carries many diagnosis, including PTSD, Reactive Attachment Disorder, ADHD, anxiety disorder, and mood disorder. He also suffers from learning and cognitive disabilities, and his adaptive functioning is limited.
2. Beginning in second grade and until the middle of fourth grade, Student was placed by the District in a substantially separate language-based classroom. During such time, Student was challenged by anxiety, hypervigilance and episodes of rage and aggression at home.
3. Student was found eligible for services through DMH in March 2016. From September 2016 to May 2019, Student and his family received a variety of DMH-funded wrap-around services. During said time period, Student was hospitalized frequently due to "out of control aggressive and unmanageable behaviors at home despite a significant level of support."
4. In January 2017, the District placed Student at the New England Adolescent Research Institute (NEARI), a private, therapeutic special education school in Easthampton, Massachusetts, which he continues to attend to date.
5. In March 2019, following another hospitalization, Student was placed at the Northampton Center for Children and Families (NCCF), a DMH-funded residential treatment center, part of the Cutchins Program for Children and Families, where he continues to reside to date.

¹ See BSEA Hearing Rule VI D.

² The following facts are not in dispute and are taken as true for the purposes of this *Motion*. These facts may be subject to revision in subsequent proceedings.

6. Student continues to be very closed emotionally and to have limited insight into the causes of his ongoing emotional distress. His self-help and independent living skills are extremely limited.
7. On April 28, 2021, following Student's three-year re-evaluation, the Team agreed that NEARI was no longer an appropriate school placement for Student.
8. On June 4, 2021, DMH informed Parents that it would not cost-share a placement with the District.
9. The District has sent referral packets to three private day programs, including the May Center School in West Springfield, Massachusetts.
10. On July 27, 2021, Parents filed the instant appeal alleging, in part, that the District's proposed placement at a private day program fails to offer Student a FAPE and that Student requires placement in a residential program. In response, the District asserted that DMH is responsible for addressing Student's mental health needs, which are distinct and separate from his learning needs.
11. On September 3, 2021, the District filed the instant assented-to Motion to join DMH, and on September 16, 2021, DMH filed its Opposition.

LEGAL STANDARDS:

1. 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, the Hearing Officer must consider the statutory language regarding the jurisdiction of a BSEA Hearing Officer over state agencies.

2. BSEA Jurisdiction Over State Agencies

The extent to which the BSEA may order services to be provided by another state agency 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."⁴

³ BSEA Hearing Rule I(J).

⁴ MGL c. 71B, s. 3.; see also 603 CMR 28.08(3) (regulatory language similar to above-quoted statutory language).

Hence, although it is a school district's responsibility to provide a student with a FAPE, the BSEA may order a state agency to provide services over and above those that are the responsibility of the school district if the services are found to be necessary to ensure that the student is able to access or benefit from the special education program and services offered by the school district.⁵ As explained by Hearing Officer William Crane in *In Re: Plymouth Public Schools (Ruling)*, BSEA # 06-2584,

[t]he “in addition to” language within M.G.L. c. 71B, § 3 has been interpreted by BSEA Hearing Officers to mean that if a student's needs can be met through the special education and related services which are the responsibility of the school district, complete relief can be granted without the need for the human service agency to become a party and joinder is not warranted, at least for the purpose of requiring the agency to provide services. This maintains the school district as the entity with sole responsibility for all those services to which the student is entitled pursuant to state and federal special education law. On the other hand, if additional services from a human services agency (over and above those services that are the responsibility of the school district) may be necessary to ensure that the student will be able to access or benefit from the school district's special education program and services, then joinder of the state agency may be appropriate.⁶

Therefore, in order to join a state agency, “the moving party must be able to show, at least in a preliminary way, that it will be able to present evidence at a Hearing that may result in the entity being found responsible to offer some service ... to the student.”⁷

a. Department of Mental Health (DMH)

DMH is a state agency falling squarely within the grant of authority conferred to the BSEA under the aforementioned regulations. A “BSEA Hearing Officer may require DMH to provide additional services but only in accordance with the DMH rules, regulations, and policies.”⁸ When an agency has found a client eligible for services, the BSEA may order the provision of specific services, even if the agency originally exercised its discretion to withhold them.⁹ On October 30, 2019, DMH offered guidance and clarification in the implementation of DMH's service authorization regulations, 104 CMR 29.00, with respect to provision of residential intervention for children, youth and young adults (“2019 Guidance”). Specifically, the 2019 Guidance indicated as follows:

⁵ See, e.g., *Ugo v. Westford Public Schools*, BSEA # 16-07922 R2 (Reichbach, 2016); *In Re Stoughton Public Schools, Department of Developmental Services and Department of Mental Health*, BSEA #14-06800 (Crane, 2014); *In Re Lexington Public Schools*, BSEA #13-05048 (Figueroa, 2013).

⁶ *In Re: Plymouth Public Schools (Ruling)*, BSEA # 06-2584 (Crane, 2006).

⁷ *In Re: Boston Public Schools District*, BSEA #02-4553 (Figueroa, 2002).

⁸ *In Re: Stoughton Public Schools, Department of Developmental Services, and Department of Mental Health*, BSEA #14-06800 (Crane, 2014).

⁹ See, e.g., *In Re: Southern Berkshire Regional School District*, BSEA #03-2013 (2003, Byrne); *In Re: Brockton Public Schools District*, BSEA # 02-0310 (2002, Figueroa); *In Re: Medford Public Schools*, BSEA #01-3941 (2001, Crane).

DMH will not fund residential placements in 24/7 residential schools when it is determined that the youth needs such a service to make educational progress, which includes the generalization of skills necessary for safe community living. For DMH service authorized youth who require such placements, DMH may be involved to provide ancillary services within its service system as clinically indicated, and will assist the youth in transitioning back to a community based setting as soon as possible.

DMH will fund the residential portion of a 24/7 residential school placement in extraordinary circumstances; typically in cases where the youth could function in a less restrictive community setting, but where there are no appropriate openings within DMH's group care system. DMH will authorize and fund this service on a short-term basis only.¹⁰

APPLICATION OF LEGAL STANDARDS AND CONCLUSION:

In order to decide whether joinder of DMH in this matter is appropriate, I must first determine whether complete relief may be granted among those who are already parties, or if DMH 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.¹¹ If so, I must then determine whether joinder of DMH is in accordance with the agency's rules, regulations, and policies.¹²

It is not disputed that pursuant to its own rules, regulations and policies relative to providing services for children with a serious emotional disturbance, Student is eligible to receive DMH continuing care services. Beginning in March 2016 and until Student entered a DMH-funded residential treatment program, DMH provided the family with therapeutic services at home. Furthermore, since March 2019, Student has been residing in a DMH group home.

Parents now seek a residential school placement for Student. The District disputes it is responsible to fund the residential cost, and, along with Parents, assert that DMH is responsible for addressing Student's mental health needs, which are distinct and separate from his learning needs. However, DMH asserts that it has no interest in the matter, which may be disposed of absent its participation without any prejudice to the parties. DMH argues that the District seeks joinder of DMH solely so that DMH could be ordered to pay for the residential portion of a private residential school placement for Student or that DMH be ordered to provide other services to Student in the event that the Hearing Officer determines that a day placement is appropriate. Moreover, DMH asserts that DMH policy generally prohibits DMH from funding a residential school placement and that there is no suggestion here from either Parents or the District that there are any additional DMH services which are needed to meet Student's mental health needs or to assist him in accessing a FAPE.

¹⁰ The 2019 Guidance may be found at <https://www.mass.gov/doc/19-02-dmh-child-youth-and-families-division-residential-intervention-policy-effective-october/download>.

¹¹ BSEA Hearing Rule I(J).

¹² M.G.L. c. 71B, § 3.

I find DMH's argument unpersuasive because it ignores the broad authority of a Hearing Officer to fashion the relief she deems appropriate¹³ and presumes findings which can only be made following a hearing on the evidence. Here, although I would not be considering a residential cost-share against DMH, as to do so would be violative of DMH policy, it is premature to disregard the possibility that Student may need ancillary services not currently provided - and separate from a residential placement- within the array of supports that can be provided by DMH and which DMH is uniquely situated to offer. What those supports may include will depend on the evidence elicited at Hearing.

Furthermore, DMH argues that, in order to join a state agency, "the moving party must be able to show, at least in a preliminary way, that it will be able to present evidence at a Hearing that may result in the entity being found responsible to offer some service ... to the student."¹⁴ In this case, DMH submits that the District and Parents have failed to do so. However, I disagree. Instead, I find in a "preliminary way," the District and Parents have, in fact, done just that. Both Parents and the District assert that Student continues to be very closed emotionally, to have limited insight into the causes of his ongoing emotional distress and that he has extremely limited self-help and independent living skills. Such skill deficits, if non-educational in nature, may, in fact, be DMH's responsibility to address.

Hence, if I find that any additional supports beyond those that are the responsibility of the District are necessary to ensure that Student will be able to access or benefit from his special education program and services, then without joinder of DMH, complete relief cannot be granted in the instant case.¹⁵ In addition, administrative efficiency supports joinder of DMH so that, if needed, all viable alternatives and relief are available and can be fashioned to assure Student's access to FAPE in a thoughtful and well-coordinated manner, at the conclusion of the Hearing.¹⁶ Moreover, none of DMH's rules, regulations or policies prohibit joinder in this case, as responsibility for a residential component is not among the remedies that will be considered against DMH in this matter.

Therefore, based on the facts recited above and the applicable Joinder rules and in order to be able to dispose of this matter fully, I find that DMH must be joined as a necessary Party to this proceeding.

ORDER:

The District's Motion to Join the Department of Mental Health is hereby **GRANTED**. The Department of Mental Health is joined as a necessary party to this proceeding.

¹³ M.G.L. c. 71B, § 3; see also *School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U.S. 359, 363(1985) (relying on 20 U.S.C. § 1415(i)(2)(C)(iii)); see also *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244, 129 S. Ct. 2484, 2494, 174 L. Ed. 2d 168 (2009) ("§1415(i)(2)(C)(iii) authorize[s] hearing officers as well as courts to award reimbursement notwithstanding the provision's silence with regard to hearing officers").

¹⁴ *In Re: Boston Public Schools District*, BSEA #02-4553 (Figueroa, 2002).

¹⁵ See, e.g., *In Re: Plymouth Public Schools*, BSEA #06-2584 (Crane, 2006); *In Re: Lunenburg Public Schools and Department of Mental Health*, BSEA #05-0799 (Byrne, 2004).

¹⁶ Furthermore, although joinder *per se* may not be necessary to ensure DMH's participation in the evidentiary Hearing, such participation will be beneficial to the hearing process because of DMH's involvement with and expertise regarding Student's mental health needs.

So Ordered by the Hearing Officer,

/s/ Alina Kantor Nir

Hearing Officer

Dated: September 20, 2020