

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

In Re: Student v.
Norwell Public Schools &
Cardinal Cushing Centers

BSEA # 2206106 &
BSEA # 2209648

**RULING ON PARENT’S MOTION TO JOIN THE DEPARTMENT OF
DEVELOPMENTAL SERVICES AND MOTION FOR EMERGENCY ORDER FOR
DEPARTMENT OF DEVELOPMENTAL DISABILITIES SERVICES TO
PROVIDE THE PARENT WITH A SPECIFIED DATE AND TIME TO CONVENE A
MEETING FOR THE MASSCAP ASSESSMENT**

On June 30, 2022, Parent in the above-referenced matters filed a Motion to Join the Department of Developmental Services (DDS), asserting the BSEA’s jurisdiction to resolve disputes involving other state agencies.

In her Joinder Motion, Parent argued that DDS had violated Student’s rights to transitional services consistent with 34 CFR 300.43 and 34 CFR 300.154 *et seq.* Parent asserts that a “Chapter 688” referral was made consistent with the process necessary for Student to receive adult services, and that Maura Geary of DDS participated in numerous IEP Team meetings; however, Ms. Geary never discussed DDS’ process or whether Student could receive residential placement at an approved DDS program (purportedly after his eligibility for special education expired). Parent asserts that she has forwarded numerous documents supporting Student’s diagnoses, needs and recommendations to DDS, thus the agency is aware of Student and his need for DDS services upon turning 22 years of age in February of 2023. Parent contends that since at present Student has not participated in a “MASSCAP”, he is not part of the group of students to which DDS will offer residential placement “next fiscal year as he was not identified pursuant to the alleged MASSCAP assessment” (which was not conducted before July 1, 2022). Parent further states that DDS has never requested, nor has she granted, consent to proceed with Student’s MASSCAP assessments.

Lastly, Parent asserts that she requested and has not received information from DDS regarding the Self-Directed Care program. According to Parent, said program would allow Student “the power and authority to hire his staff while living at home rather than a residential placement, [by] using the funds in his budget through DDS.” Were Student not eligible for residential placement Parent seeks that he receive Self-Directed Care funds.

Parent seeks an order requiring DDS to schedule a meeting with Parent within 10 days of the BSEA Order; obtain parental consent for Student’s MASSCAP; provide written information regarding the qualifications of the DDS evaluator, conditions for the evaluation and ensure that all areas of Student’s behavior and daily living functioning be assessed, and ascertain

whether DDS will place Student on the list for residential programming for the 2023 fiscal year.

Subsequent to her joinder motion, Parent filed a July 12, 2022, Motion for Emergency Order for the Department of Developmental Disabilities Services to Provide the Parent with a Specific Date and Time to Convene a Meeting for the MASSCAP Assessment. Parent sought that the BSEA Hearing Officer order DDS to schedule a meeting to discuss the MASSCAP assessment necessary for DDS to determine whether Student is eligible for DDS residential placement or whether Student was “eligible for self-directed care and the corresponding procedures.” Parent’s request further stated,

Additionally, the Parent is seeking that the Order include that DDS must provide the Parent with detailed information regarding the MASSCAP, such as what it will measure, the purpose, and how the information is used to make a determination as to a residential placement or not. The parent is also seeking that the Order include the name of the evaluator and their credentials to administer the assessment. The student will turn 22 in February [of] 2023, which is also his last day of school at Cardinal Cushing. The Parent is aware that the DDS procedures for transitioning is long and while the student has been deemed eligible for adult services the Parent is not aware of exactly what he is eligible for and has made requests for months and her requests have fallen upon deaf ears...

Thus, Parent seeks BSEA intervention to resolve her concerns and assure a smooth transition for Student into adult living in 2023.

DDS filed no formal response or opposition to either of the two Motions and instead forwarded to this Hearing Officer a series of emails between Parent, her advocate and DDS, for the period from July 1 and July 18, 2022, providing dates for a MASSCAP and responding to this and other parental requests.

This Ruling takes into account Parent’s submissions and DDS’s email trail.

Facts

Student is a 21 years-old individual who receives special education services through Norwell Public Schools (Norwell). Student has been diagnosed with autism, Attention Deficit Hyperactivity Disorder (ADHD), cerebral palsy, developmental delay and several medical ailments. He attends Cardinal Cushing School as a residential student consistent with IEPs promulgated by Norwell since 2019. In 2023, Student’s entitlement to special education services is scheduled to end. DDS has attended numerous Team meetings, allegedly without Parent’s consent. According to Parent, since contacting her on or about July 1, 2022, to convene a

meeting (which Parent believed would involve the MASSCAP assessment) DDS has been unresponsive to Parent's communications (through July 12, 2022).

Analysis

Joinder of a party to a BSEA proceeding must comply with the requirements delineated in Rule I.J of the *Hearing Rules for Special Education Appeals*.¹ Said Rule provides for joinder of a third party when complete relief cannot be granted as among those parties already present.

The authority for a BSEA hearing officer to join a state agency to a BSEA proceeding is found in 603 CMR 28.8(3). Specifically, this regulation grants the BSEA Hearing Officer authority

to order a state agency to provide services found necessary to enable the receipt of a free and appropriate public education or to provide services above and beyond those services that are the responsibility of the public school district, if those services are necessary to ensure that the student can access or benefit from a special education program and services provided by the public school district, as long as the services ordered to be provided by the agency are among those services offered in accordance with the rules, regulations and policies of the respective agency. (See Ruling on *Lenox Public Schools' Motion to Join the Department of Children and Families and the Department of Mental Health, In Re: Student v. Lenox Public Schools and Beverly Public Schools*, BSEA #2209086 (7/28/2022).)

Consistent with the aforementioned regulation, BSEA Hearing Officers have maintained that an agency's finding of eligibility for the student to receive agency services /and or agency involvement with the student and or his/her family, is a necessary element to the determination of joinder. Here, DDS has been recognized as the Chapter 688 transition into adult life agency, a DDS representative has participated in Student's IEP Team meetings, and it appears that DDS is in the process of convening a meeting and conducting the necessary assessments/ MASSCAP.

I note that DDS did not file a response or objection to Parent's request for joinder within the seven calendar days allowed pursuant to Rule VI of the *Hearing Rules for Special Education Appeals*, or at any time thereafter. Thus, Parent's Motion to Join DDS is **GRANTED**.

Next, I consider Parent's Motion involving issuance of an Emergency Order for DDS to schedule/ convene a MASSCAP Assessment.² When this Motion was filed, DDS was not a party to this proceeding. Parent's Motion was thus premature. The BSEA cannot enter

¹ Parent asserts the BSEA's authority to adjudicate special education matters as against state agencies consistent with 603 CMR 28.08(3) *et seq.* and DDS has not challenged this authority.

² I note that numerous emails between Parent and DDS during the period from July 1 to July 18 reflect DDS's and Parent's attempts to convene a MASSCAP.

orders against non-parties. To the extent that Parent may argue that DDS is now a Party and that the BSEA may enter said order, Parent is mistaken.

The jurisdiction of the BSEA over state agencies is limited to its grant of authority in connection with special education, it is not intended as a substitute for internal policies/ procedures/ or proceedings of the particular agency. Said level of interference and micromanagement is neither intended nor permissible. The authority vested in BSEA hearing officers over state agencies that are parties to a BSEA proceeding is limited to the following:

- a) ordering a state agency to provide services found necessary to enable the receipt of a free and appropriate public education (during the student's period of entitlement); or,
- b) ordering the agency to provide services above and beyond those services that are the responsibility of the public school district, if those services are necessary to ensure that the student can access or benefit from a special education program and services provided by the public school district; and
- c) ordering provision of only such service that are in accordance with the rules, regulations and policies of the respective agency.

Paragraphs a and b above are clearly intended to enable a hearing officer to order provision of special education services that are not the responsibility of the public school district. The assessments and meetings with which Parent takes issue in the case at bar involve information necessary for DDS to determine the services Student may be entitled to receive *after* Student's entitlement to special education services expire. To the extent that the information sought by DDS may impact Student's Chapter 688 transition into adult services and the responsibility of the public school district (over procedures for which it has control) regarding Chapter 688 transition planning, Parent's concerns may be heard at Hearing. Any findings and orders by the BSEA Hearing Officer would then be entered as part of the Hearing Decision.³ I note that the Hearing in this matter is scheduled to proceed on October 26, 27, 31 and November 1, 2022.

For all of the aforementioned reasons, Parent's Motion for Issuance of an Emergency Order for DDS to Schedule/Convene a MASSCAP Assessment is **DENIED**.

Lastly, Parent has vacillated between allegations that a DDS representative has attended Student's IEP meetings despite not having received parental consent to do so, and that DDS has not sought parental consent to proceed with a MASSCAP, although Parent is eager to provide such consent. Given how close Student is to his 22nd birthday it would behoove Parent to cease arguing over consent, grant it, and facilitate any and all processes that may be beneficial to Student's transition into adulthood.

³ Moreover, the email trail noted above suggests that the Parties may very well have convened the MASSCAP meeting by now, rendering Parent's Motion moot.

The following Orders are entered:

1. Parent's Motion to Join DDS to BSEA # 2206106 & BSEA # 2209648 is hereby **GRANTED**.
2. Parent's Motion involving an Emergency Order for DDS to schedule/convene a MASSCAP Assessment is hereby **DENIED**.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Rosa I. Figueroa

Dated: August 12, 2022