

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

In Re: Student & Nashoba Regional School District

BSEA #2306061

RULING ON NASHOBA REGIONAL SCHOOL DISTRICT'S MOTION TO JOIN

This matter comes before the Hearing Officer on Nashoba Regional School District's (District) *Motion to Join (Motion)* the Massachusetts Department of Mental Health (DMH), filed on February 21, 2023. The District seeks joinder of DMH as a necessary party, in accordance with Rule I(J) of the *Hearing Rules for Special Education Appeals (Hearing Rules)*, claiming complete relief cannot be granted in its absence. Specifically, the District submits that the involvement of DMH, an agency who the District contended at the time it filed its *Motion* had found Student eligible for and had begun to, or was about to begin providing, Student with its services, is necessary, given Student's "complex mental health issues and long-standing struggles with dysregulated behaviors as well as partial and in-patient hospitalizations".

No party or potential party has requested a hearing on the *Motion*. Because neither testimony nor oral argument would advance the Hearing Officer's understanding of the issues involved, this Ruling is issued without a hearing, pursuant to Hearing Rule VII(D).

For the reasons articulated below, the District's *Motion* is **DENIED without prejudice** and DMH is not joined in this matter at this time.

RELEVANT PROCEDURAL HISTORY AND POSITIONS OF THE PARTIES

On February 8, 2023, Parents filed a *Request for Due Process Hearing (Hearing Request)* seeking, among other requests, reimbursement for tuition and related costs associated with both Student's attendance in November 2021 at a residential program in Utah, and his current attendance, since January 18, 2022, at a residential school in New Hampshire. Parents also request the District be ordered to place Student, who is 18, and who has delegated educational decision-making to his Parents, at his current residential program in New Hampshire, prospectively, because the IEPs offered by the District were not reasonably calculated to provide Student with a free, appropriate, public education (FAPE). A *Notice of Hearing* was issued in this matter on February 9, 2023. An initial Hearing date was set for March 15, 2023.

On February 21, 2023, the District filed its *Response to the Hearing Request (Response)*, along with the *Motion*. In its *Response*, the District contends that, in addition to DMH being a necessary party in this matter, the District has at all times offered Student a FAPE based upon the information that it has had before it, and that it was impeded from obtaining additional information about Student due to Parents' multiple failures to consent to testing. Further, the

District argues that Parents and Student are not entitled to reimbursement for any costs associated with Student's attendance at the residential program in Utah as they failed to provide the District with the requisite ten-day notice per 34 CFR §300.148(d)(1)(ii), prior to placing Student at this program. Finally, the District does not dispute Student's current need for a residential placement, as it had proposed such a placement at the Team meetings held in the fall of 2022, however it does not agree that Student's current program in New Hampshire is appropriate for him. Rather, the District submits that Student should be placed at one of three residential programs in Massachusetts that it sent referral packets to on February 13, 2023, with Parents' consent.

On February 27, 2023, the parties, including DMH, (who filed a *Notice of Limited Appearance* for the purpose of addressing the *Motion* on the same date), participated in an initial Conference Call and agreed, among other things, that DMH would file its response to the *Motion* by March 8, 2023¹. During the Call, Parents also advised that they took no position on the *Motion*.

On March 8, 2023, DMH filed its *Memorandum in Opposition to Motion to Join Department of Mental Health (Opposition)*, arguing that the instant case consists of requests for reimbursement for two unilateral placements of Student and, prospectively, a dispute as to which residential educational program is appropriate for Student. DMH contends that it is not a necessary party to these proceedings, that its policies² prohibit the BSEA from issuing any Orders for any relief sought by the District, and that Student was found ineligible for DMH services on March 2, 2023 based on lack of needs and means³, and thus it cannot be joined in this matter⁴. Neither Parent nor the District has challenged DMH's assertion of Student's recent finding of ineligibility nor has any evidence been presented that this finding is or will be appealed by Parents.

LEGAL STANDARD AND DISCUSSION

In analyzing this joinder request, I first consider the state and federal laws establishing the limited jurisdictional authority of the BSEA, and the available entities over which it can exercise such subject matter jurisdiction. Specifically, 20 USC §1415(b)(6), grants parties the right to file timely complaints with the state educational agency designated to hear such "with respect to any matter relating to the identification, evaluation or educational placement of the child, or the provision of a free appropriate public education to such child". Similarly, M.G.L. c. 71B §2A, establishing the BSEA, authorizes it to resolve special education disputes, "... between and among parents, school districts, private schools *and state agencies ...*" (emphasis added). M.G.L. c. 71B §3, also provides that,

"The hearing officer may determine, *in accordance with the rules, regulations and policies of the respective agencies*, that services shall be provided by the ...,"

¹ The parties also discussed converting the initial Hearing date into a Pre-Hearing Conference and postponing the Hearing to May 3, 4 and 5, 2023. On March 6, 2023, the Hearing was so postponed for good cause.

² Specifically, DMH CYF (Child, Youth and Families) Residential Intervention Policy #19-02 of October 30, 2019 (*DMH Policy 19-02*), a copy of which was filed with the *Opposition*.

³ In its *Opposition*, DMH noted that after this finding of ineligibility, "DMH has offered the family a liaison who is available to facilitate a re-assessment of Student's clinical needs if and when the student graduates from or is placed in a less restrictive setting than a residential school".

⁴ See M.G.L. c. 71B § 3.

the department of mental health, ... or any other state agency or program, in addition to the program and related services to be provided by the school committee⁵” (emphasis added).

According to Rule I(J) of the *Hearing Rules*, upon written request of any party, I am able to allow joinder of any other party identified in M.G.L. c. 71B §3, such as DMH, who is not otherwise included in a *Hearing Request*,

“... in cases where complete relief cannot be granted among those who are already parties, or if the party 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 its absence. Factors considered in determination of joinder are: 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 dispute.”

Thus, here, DMH may be joined provided I find that such joinder would not be contrary to its rules, regulations or policies. Moreover, after consideration of the risk of prejudice to the present parties in allowing such joinder, the alternatives available to issue a judgement without joinder, and the existence of an alternative forum to resolve any disputes, I must also find that complete relief cannot be granted among the existing parties and thus the case cannot be disposed of in DMH’s absence, in order for DMH to be joined. In other words, for joinder of DMH to be allowed, the District “... 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 student⁶.”

While, typically, a close review of *DMH Policy 19-02* would also be in order, so as to fully analyze the requested joinder of DMH, in this case, it is unnecessary. Although it appears that Student was eligible for and was expected to receive services from DMH at the time the *Motion* was filed, subsequently, according to DMH, on March 2, 2023, it found Student ineligible for DMH services. No evidence has been presented that Parents are challenging this finding⁷. This

⁵ See 20 USC §1412(a)(12).

⁶ *In Re: Boston Public School District*, BSEA No. 02-4533 (Figueroa, 2002); see *In Re: Acton-Boxborough Regional School District*, BSEA No. 1703770, 23 MSER 99 (Figueroa, 2017).

⁷ Compare *In Re: Boston Public Schools and Mass. Dept. of Mental Health*, BSEA No. 1707097 (Berman, 2017) wherein DMH participated as a party in the matter despite finding a Student ineligible for services, as such ineligibility finding was under appeal by the Parents at the time of the Hearing on the merits. In confirming the involvement of DMH, the Hearing Officer noted that “It is clear from the record that even within a residential placement, Student will need the types of clinical supports and safety-related supervision that DMH can provide in [residential educational] programs...”; *Ugo & Westfield*, BSEA No. 16-07922 R2 (Reichbach, 2016) keeping DMH as a party in the proceeding as DMH’s finding of ineligibility for DMH services was under appeal by Parents, while recognizing that “[r]emaining a party to this matter at this point in time is not inconsistent with DMH regulations because, in the event that DMH’s [in]eligibility determination is not reversed, the BSEA will not order DMH to provide services to Ugo.”; *In Re: Georgetown Public Schools*, BSEA No. 1500020 (Ruling, 2014); see *In Re: Fall River Public Schools*, BSEA #1406929 (Oliver, 2014); *In Re: Medford Public Schools*, BSEA No. 01-3941 (Crane, 2001) denying joinder of DMH without prejudice due to DMH’s agreement during the Motion Hearing to allow Parents the right to seek reconsideration or further appeal of its prior finding on appeal upholding denial of

non-appealed finding of ineligibility ends the joinder inquiry at this time, as DMH does not currently have any responsibility, potentially or otherwise, to provide any services to Student⁸. Should Student’s ineligibility for DMH services be appealed or otherwise change before a Hearing on the merits occurs in this matter, the District can renew its request for joinder. For now, however, the District’s *Motion* is **DENIED without prejudice**.

In light of my determination above, it is unnecessary for me to address DMH’s additional arguments against joinder. Accordingly, the above-referenced matter will proceed at this time with the Parent and District as the only parties.

So Ordered by the Hearing Officer

/s/ Marguerite M. Mitchell

Marguerite M. Mitchell

Dated: March 10, 2023

eligibility for DMH services based on technical concerns with this finding, that, therefore, meant Student had not yet had a “final, fair determination” of his eligibility appeal with DMH.

⁸ *In Re: Boston Public School District*, BSEA No. 02-4533 (Figueroa, 2002); see *In Re: Acton-Boxborough Regional School District*, BSEA No. 1703770, 23 MSER 99 (Figueroa, 2017); see *In Re: Alistair & Andover Public Schools & Massachusetts Department of Public Health*, BSEA No. 1502640 (Reichbach, 2014); *In Re: Stoughton Public Schools, Department of Developmental Services and Department of Mental Health*, BSEA No. 1406800 (Crane, 2014), concluding that DMH should be dismissed as a party from the matter in a situation where Student was never found eligible for services, and there was not a current pending application for eligibility, reasoning that “[i]t cannot be disputed that the DMH rules, regulations and policies preclude DMH from providing services to someone who has not been determined eligible for its services”; *In Re: Boston Public Schools*, BSEA No. 06-6542R (Figueroa, 2006); *In Re: West Springfield Public Schools & Voltan*, BSEA Nos. 04-5315 and 04-5316 (Byrne, 2004).