

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

In Re: Concord-Carlisle School District

BSEA # 1307146

**RULING RE MOTION FOR DISMISSAL OF
MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH**

Introduction

On April 10, 2013, Parents filed with the Bureau of Special Education Appeals (BSEA) a hearing request against the Concord-Carlisle School District (Concord-Carlisle) and the Massachusetts Department of Mental Health (DMH). DMH then filed a motion to dismiss, seeking to have DMH dismissed as a party to these proceedings. Parents and Concord-Carlisle filed oppositions to DMH's motion, and on April 29, 2013, a telephonic hearing was held on the motion.

Facts

The following facts are assumed to be true for purposes of this Ruling only.

Student is a sixteen-year-old young woman with a number of significant emotional deficits, including diagnoses of a major depressive disorder, an anxiety disorder and an eating disorder.

On or about August 13, 2012, Student cut herself deeply across her wrists. During the beginning of the 2012-2013 school year, Student appeared to be overwhelmed, having cut herself again the day before. Concord-Carlisle proposed its therapeutic program (Alt Pro), and Student attended this program for one day on September 24, 2012. She continued self-injurious behavior and was admitted to the adolescent psychiatric unit at Cambridge Hospital.

In October 2012, Student began an extended evaluation at Germaine Lawrence Youth Villages as a residential student. On or about December 19, 2012, the IEP Team met to consider the conclusions and recommendations from this extended evaluation. The IEP Team continued to propose Concord-Carlisle's Alt Pro program.

During this time, Student was referred to DMH for an eligibility determination. DMH determined Student eligible and approved her for services. Parents, Concord-Carlisle and DMH began discussing the possibility of a residential placement, with a cost-share by DMH

and Concord-Carlisle. However, the parties were unable to reach agreement on an appropriate, long-term placement for Student.

Believing that they had no other options that were appropriate for their daughter, Parents unilaterally placed Student at the New Haven School in Spanish Fork, Utah on January 20, 2013, having previously advised Concord-Carlisle. Student has continued to attend this school. Through their hearing request, Parents now seek both reimbursement for and prospective placement at the New Haven School, including an order that DMH pay for the residential portion of this placement in the event that Concord-Carlisle is not responsible for the entire placement. In their hearing request, Parents named DMH as a party and continue to argue that DMH is a necessary party for complete relief to be provided to Parents.

Similarly, Concord-Carlisle takes the position that DMH should remain a party. Concord-Carlisle argues that it may turn out that Student can be appropriately educated within a day therapeutic program, and that any needed residential services are for non-educational reasons and therefore may possibly be the responsibility of DMH. Concord-Carlisle seeks to have all of these issues resolved within a single BSEA proceeding.

DMH seeks dismissal, taking the position that it should not be a party to these proceedings. First DMH argues that the only appropriate vehicle by which it may become a party is through a motion to join. Second, DMH argues that joinder is premature, that Concord-Carlisle's responsibility to provide FAPE should first be determined by the BSEA, that DMH does not provide educational services, and that it is likely that any need for a residential placement will be for educational reasons and therefore the sole responsibility of Concord-Carlisle. Third, DMH takes the position that any disagreement between Parents and DMH with respect to what services should be provided by DMH is more properly the subject of an appeal through DMH's administrative processes, rather than through the BSEA.

Legal Framework

The issue before me is whether DMH should be a party. Although this is not, strictly speaking, a ruling on joinder, I will consider BSEA joinder rules that typically apply when a party seeks to have a human services agency, such as DMH, become a party to BSEA proceedings. Pursuant to BSEA Hearing Rule 1J, joinder may be ordered upon a finding that (1) complete relief cannot be granted among the existing parties, or (2) the proposed party to be joined has an interest in this matter and is so situated that the dispute cannot be disposed of in its absence. Pursuant to Rule 1J, factors to be considered in determining whether to join a party are (1) the risk of prejudice to the present parties in the absence of the proposed party; (2) the range of alternatives for fashioning relief; (3) the inadequacy of a judgment entered in the proposed party's absence; and (4) the existence of an alternative forum to resolve the issues.

I further note that statutory language regarding the jurisdiction of a BSEA Hearing Officer over state agencies (including DMH) provides, in part, as follows:

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 social services, the department of mental retardation, 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.¹

The phrase “in addition to” within this statutory language 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.

However, 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, so that the BSEA may then consider what, if any, additional services should be ordered.²

Discussion

I first consider DMH’s argument that it may not be named, *ab initio*, as a party and that the only appropriate way for it to become a party is through a joinder motion, which has not been filed by Parents (Concord-Carlisle’s objection to DMH’s motion included an alternative claim to join DMH).

There is nothing within the BSEA Hearing Rules that precludes Parents from naming DMH as a party in Parents’ hearing request. The practice at the BSEA is to allow the moving party to name any opposing party, including a state agency such as DMH. When this occurs and the named opposing party believes that it should not be a party to the BSEA proceedings, the appropriate response is for the party to file a motion to be dismissed from the BSEA proceedings, as DMH has done in this case.

I next consider DMH’s argument that any disagreement that Parents may have with DMH’s proposed services are appropriately addressed through the DMH administrative appeal processes, rather than through the BSEA. Although this argument, on its face, makes sense in that it comports with the rules and regulations that DMH has established for resolution of

¹ MGL c. 71B, s. 3. See also 603 CMR 28.08(3) (regulatory language similar to above-quoted statutory language).

² See, e.g., *In Re: Fall River Public Schools*, BSEA # 09-6962, 15 MSER 152 (SEA MA 2009); *In Re: Lowell Public Schools*, BSEA # 07-2412, 13 MSER 40 (SEA MA 2007); *In Re: Gloucester Public Schools*, BSEA # 04-3543, 10 MSER 389 (SEA MA 2004); *In Re: Concord-Carlisle Public Schools*, BSEA # 02-4839, 8 MSER 326 (SEA MA 2002); *In Re: Ipswich Public Schools*, BSEA # 02-4324, 8 MSER 185 (SEA MA 2002) and other rulings cited therein.

disputes regarding DMH services, it fails to consider the over-arching mandate and purpose of the portions of MGL c. 71B, s. 3 that are quoted above. This statute seeks to ensure that a single agency (i.e., the BSEA) is able to determine not only Student's special education needs and how they should be met, but also any additional services that must be provided by DMH in order that Student have access to and benefit from her special education services. MGL c. 71B, s. 3 would serve little, if any, purpose if any human service agency disputes relative to a special education student's services must be referred back to that agency's dispute resolution processes rather than be considered by the BSEA.

Finally, I consider DMH's remaining arguments. DMH is correct that any responsibility it may have to provide services to Student and her family is in addition to Concord-Carlisle's responsibility for special education and related services. And, it is possible that DMH may also be correct that any needed residential services are educational in nature and therefore would be the responsibility of Concord-Carlisle. However, this can only be determined through an evidentiary hearing.

To its credit, DMH has been participating with Parents and Concord-Carlisle in the planning for Student's mental health needs, recognizing that it may need to play an important role in Student's treatment and recovery. When Student returns from Utah, it may be that she will be appropriately served through a DMH group home, family support services or other DMH services.

To date, the parties have been unable to agree regarding DMH's appropriate role. Ultimately, any services from DMH and any special educational services from Concord-Carlisle must work together in order to ensure that Student has the opportunity to receive an appropriate education in the least restrictive environment. The only vehicle for ensuring that appropriate, coordinated and consistent services are provided by DMH and Concord-Carlisle is for DMH to be a party to the instant dispute.

For these reasons, DMH should remain a party to these proceedings.

Order

The Massachusetts Department of Mental Health's motion to dismiss is DENIED.

This matter remains scheduled for a Hearing Officer-initiated conference call at 4:00 PM on May 7, 2013.

By the Hearing Officer,

William Crane
Date: May 6, 2013