

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

Student

&

Stoughton Public Schools

Department of Developmental Services

Department of Mental Health

BSEA # 1406800

**RULING REGARDING THE MASSACHUSETTS
DEPARTMENT OF MENTAL HEALTH'S MOTION TO DISMISS**

The Hearing Request in this matter was filed with the Bureau of Special Education Appeals (BSEA) on March 20, 2014. On March 21, 2014, the BSEA granted Parent's request for expedited status.¹

The Massachusetts Department of Mental Health (DMH) seeks to be dismissed as a party and has filed motion to dismiss for this purpose.

Facts

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

Student is a thirteen-year-old boy with a number of significant deficits, including a diagnosis of intellectual disability with an IQ of 46. Student also has emotional and behavioral deficits. He has manifested severe aggression at home.

Student is a sixth grader, placed at the Pilgrim Area Collaborative by his School District, the Stoughton Public Schools. Stoughton reports that while attending the Collaborative, Student has been making effective progress and has been having little or no behavioral difficulties.

¹ In addition to the parties named in the caption above, the Hearing Request named as a party the Unified Planning Teams of the Office of Children, Youth and Families of the Executive Office of Human Services ("EOHHS"). EOHHS filed a motion to dismiss, which was allowed by ruling dated April 1, 2014 because the relevant regulations to not allow for a Unified Planning Team while there is a pending hearing before the BSEA on a substantially related matter. See 101 CMR 17.05(B). EOHHS was therefore dismissed as a party.

Stoughton has contracted with PACES to deliver home-based services and parent training. Student is also a client of the Massachusetts Department of Developmental Services (DDS) which has offered home services.

On or about January 17, 2014, Student was admitted to Hampstead Hospital as a result of severe behavior difficulties at home. Student remains at Hampstead Hospital even though the Hospital has determined that Student is stabilized and no longer needs hospital-level care.

Parent takes the position that Student requires a residential placement as a result of his educational needs or, alternatively, that a residential placement should be funded by Stoughton and a DMH or DDS cost-share. Stoughton has denied any responsibility for residential services.

Parent and Stoughton take the position that DMH should remain a party. DMH seeks dismissal on the basis that Student is not eligible for its services.

Legal Framework

The issue before me is not, strictly speaking, a ruling on joinder, but because of their relevance, 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.²

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

² MGL c. 71B, s. 3. See also 603 CMR 28.08(3) (regulatory language similar to above-quoted statutory language).

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.³

Discussion

It is not disputed that on or before February 14, 2014, Parent filed an application for Student to become eligible for DMH services. What occurred after that is in dispute.

Typed notes produced by DMH explain that on February 13, 2014, DMH had received Student's application for DMH services; but that during a telephone call on the same day between Parent and DMH, DMH explained its clinical criteria for eligibility and further explained that Student does not meet these criteria. The DMH notes explain that Parent agreed to withdraw Student's application for DMH eligibility. DMH also produced a letter, dated February 14, 2014, to Parent from the DMH Director of Child/Adolescent Services for the Southeast Area. The letter explains that as discussed by phone with Parent, Student's application for DMH services has been withdrawn by Parent "because he does not qualify for DMH services due to his Mental Retardation."

Parent's attorney has represented that Parent has no recollection of a February 13th telephone call, nor did she receive the February 14th letter from DMH or any other correspondence or communication from DMH regarding Student's eligibility. Parent understood that DMH was continuing to consider Student's eligibility and would notify Parent with its decision.

Citing to its clinical criteria that must be met in order to be eligible, DMH takes the position that Student's principal deficit is an intellectual disability, which is likely causing Student's emotional and behavioral difficulties, with the result that Student is not eligible for DMH services.⁴ Parent disagrees, taking the position that Student has "severe mental health" deficits that cause many of his difficulties.

³ 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: Stoughton 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.

⁴ More specifically, DMH states that it is Student's intellectual disability, rather than any mental health difficulties, that is the "primary cause of [his] functional impairment that substantially interferes with or limits the performance of one or more major life activities" and that therefore Student does not meet the clinical criteria for services pursuant to DMH regulatory standards, as found in 104 CMR 29.04(2)(a)2.

For purposes of this Ruling, I accept Parent's factual representations as true. Nevertheless, it is clear that DMH currently does not have a pending eligibility application for Student, and it has yet to make a formal determination of whether Student is eligible for its services. Parent may re-file an application or may reinstitute the withdrawn application, and DMH would then formally determine whether Student is eligible for services. It also is clear that if Parent were to follow this course, DMH would, at least in the first instance, likely determine that Student does not meet eligibility criteria for its services. Parent would then have the right to appeal this decision to the DMH eligibility office and, if denied again, could obtain a fair hearing before a hearing officer who would make a recommendation to the DMH Commissioner for a final agency decision. This is a somewhat lengthy process, requiring a number of months to complete.

As referenced within the quoted statute above, a BSEA Hearing Officer may require DMH to provide additional services but only "in accordance with the [DMH] rules, regulations and policies." It 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.

Parent would have me make that determination, without the benefit of utilizing the DMH eligibility determination process, with the result that Student should be considered eligible for DMH services and therefore DMH residential services could be ordered by the BSEA. I find that to make this determination would be well beyond my authority and expertise.

I conclude that it is the DMH process, rather than the BSEA process, that must be used to resolve the eligibility dispute between Parent and DMH, particularly where DMH has yet to formally consider an eligibility application and make an initial eligibility decision.

For these reasons, I find that DMH is not a necessary party to the instant dispute at this time.

Order

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

Accordingly, DMH is dismissed as a party.

By the Hearing Officer,

William Crane
Date: April 3, 2014