

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In RE: Malini ¹

BSEA #1408679

& Belmont Public Schools &

the Massachusetts Department of Mental Health

RULING ON SCHOOL MOTION TO JOIN

This matter comes before the BSEA on the Motion of the Belmont Public Schools to Join the Massachusetts Department of Mental Health (hereinafter “DMH”) in this action. The Parent filed a Hearing Request on June 30, 2014 seeking a BSEA finding that the Student requires a therapeutic residential educational placement in order to receive the free, appropriate public education to which she is entitled. Belmont seeks to join DMH in this action asserting that the Student requires an out-of-home placement for clinical reasons and that DMH has the responsibility and capacity to provide appropriate residential services and/or community based services that will permit the student to benefit from a less restrictive educational placement. DMH opposes joinder. It argues that it has offered the Student and her family all the community based and residential service options it currently has available and cannot be required to provide anything other than what it has contracted for. The Parent does not oppose joinder but maintains that the School bears responsibility, at least in the first instance, of meeting the Student’s educational need for residential placement.

LEGAL FRAMEWORK

BSEA Hearing Rule IJ provides for involuntary joinder of a party to a BSEA proceeding when complete relief cannot be granted among the existing parties, or when the proposed party has an interest in the matter and is so situated that the dispute cannot be disposed of in its absence. Factors to be considered in determining whether to join a party are:

¹ “Malini” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

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 parties' absence; and
4. the existence of an alternative forum to resolve the issues.

When the proposed part is a state agency, the Hearing Officer must also consider whether an exercise of jurisdiction over the agency is, in the language of the applicable statute, "in accordance with" that agency's own legislative mission and administrative regulations. M.G.L. c71B § 3. Further the Hearing Officer must determine whether the services, program, personnel or expertise unique to that agency are a necessary "addition" to the special education program proposed for a student by the school district such that without them the student cannot receive a free appropriate public education. See also: 20 U.S.C. § 1412 (12); 603 CMR 28.08 (3), *In Re: Ulrike*, 18 MSER 186 (2012), *In Re: Fall River Public Schools*, 15 MSER 152 (2009). Every joinder determination is unique and highly fact dependent.

FACTUAL BACKGROUND²

1. Malini is a 15 year old 9th grade resident of Belmont, MA. She has been diagnosed with a serious emotional disability and associated learning, behavioral and social challenges, since early elementary school. She has had an IEP through the Belmont Public Schools continuously since kindergarten.
2. Malini has been hospitalized for treatment of psychiatric illness between 5 and 12 times since her 5th grade year.
3. Malini was found eligible for DMH services in August 2012. DMH has offered the Student and her family a variety of services since that time and has participated in treatment planning and IEP meetings.
4. Belmont placed Malini at the Germaine Lawrence School, a full year private therapeutic day and residential program during the 2011-2012 academic year. Malini's last accepted IEP calls for her to attend the Germaine Lawrence School as a day student.
5. A Team meeting was held on June 17, 2014 to review the most recent evaluations of the Student. The Parent requested that Belmont develop an IEP for a therapeutic residential special education program. Belmont wanted to explore options for "extended services" from DMH that might provide additional support for Malini in the community. The DMH representative stated that it did not provide residential services for children except for temporary group home placements.
6. Malini has been an inpatient on a psychiatric service at a local hospital continuously since June 24, 2014.

² The facts recited here are both pertinent to the resolution of this Motion and not in dispute. They are, though, undeveloped and subject to expansion, explanation and revision in later proceedings.

DISCUSSION

The Parent requested a hearing to determine whether placement in a therapeutic residential school is necessary in order for Malini to receive a free appropriate public education. Belmont argues that the participation of DMH in any hearing held to determine the Student's need for residential programming is necessary because:

1. There is a clear nexus between Malini and DMH as she has been found eligible for DMH services and DMH stands ready to provide a "continuum" of voluntary adolescent services to Malini.
2. Due to Malini's current hospitalization time is of the essence in clarifying responsibility for services and placement to ensure that there is no service gap when she is discharged. Combining any service provision dispute into one consolidated BSEA determination is the quickest and most efficient route to securing the necessary services for Malini.
3. Malini's clinical needs exceed the capacity of a special education program that operates solely on a school day basis.
4. DMH has both expert knowledge of, and statutory responsibility for addressing, the clinical needs of this Student.
5. DMH has services that are or can be uniquely tailored to Malini's current clinical needs and which could support an appropriate community based day special educational program provided by Belmont. In the alternative, DMH is responsible for residential services that are needed due to Malini's clinical, rather than educational, needs.

DMH opposes joinder asserting that it has offered all available authorized appropriate services and that the family has declined to participate in any of the proffered services. DMH further asserts that the BSEA cannot order DMH to provide residential services for the Student directly, or as a funder of a residential school placement, because such an order would be inconsistent with DMH's authorizing statute.

After careful consideration of the unique facts and posture of this matter I find that the criteria for involuntary Joinder of DMH have been met. DMH has a current connection to Malini. It has specialized knowledge of, and experience with, Malini which will be critical in determining her entitlement to special education and ancillary or "additional" services consistent with the IDEA and DMH's statutory authority. Meeting the clinical and special educational needs of children and youth with serious mental illness and emotional disabilities is certainly "in accordance with" DMH's legislative mission and administrative regulations. Determining what those "additional" services are, and whether they are appropriate and useful in the context of Malini's present needs, requires DMH participation in this Hearing. No other forum exists in Massachusetts which has jurisdiction to determine, in the first instance pursuant to 20 USC §1415, the nature and extent of Malini's special education needs and entitlements as well as the obligations of state and local service providers to meet them.

For all these reasons I am persuaded that DMH is both a proper and necessary party to this Hearing.

ORDER

The Motion of the Belmont Public Schools to Join the DMH is GRANTED.

By the Hearing Officer

Lindsay Byrne
Dated: July 11, 2014