

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In re: Student v. Georgetown Public Schools
and Massachusetts Department of Mental Health

BSEA #1500020

RULING ON MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH'S MOTION TO DISMISS ITSELF FROM THIS APPEAL

BACKGROUND

Student is a sixteen-year-old tenth grader who lives in Georgetown, Massachusetts with her family and attends the Gifford School (Gifford), a private, therapeutic day school in Weston, Massachusetts. Student is funded at Gifford by the Georgetown Public Schools (GPS).

On July 3, 2014 Parents filed an expedited hearing request against GPS and the Massachusetts Department of Mental Health (DMH). Parents seek a residential placement for Student.

On July 5, 2014 DMH filed a Motion to Dismiss Itself (MTDI) as a party to this BSEA appeal, with accompanying written argument. On July 9, 2014 Parents filed their written opposition (PO) to DMH's MTDI with accompanying written argument. On July 9, 2014 the Hearing Officer scheduled a telephonic motion session for July 14, 2014. On July 11, 2014 GPS filed correspondence in support of PO. The motion session and oral arguments took place on July 14, 2014 and the Hearing Officer issued an oral ruling at the close of the motion session.

STATEMENT OF POSITIONS

DMH's position is that DMH should be dismissed as a party to this BSEA appeal. DMH states that Student is not a DMH client nor has she ever received services from DMH. On May 20, 2014 Student applied for DMH services but on July 1, 2014 DMH denied services "as the cause of her functional impairment is not a qualifying DMH diagnosis." Parents received notification from DMH on July 2, 2014. DMH argues that Student does not meet the clinical criteria for DMH service authorization because DMH determined that Student's primary impairment is a result of Asperger's Disorder (ASD) or a Pervasive Developmental Disorder

(PDD) which are not qualifying diagnoses for DMH services. DMH states the Hearing Officer's authority over DMH is conditioned upon such services being in accordance with the rules, regulations and policies of DMH. Since DMH has denied Student DMH services, DMH contends that the Hearing Officer may not exercise authority over DMH.

Parents' position is that Student requires a residential placement in order to receive a free and appropriate public education (FAPE) under state and federal special education law. Parents brought this action against both GPS and DMH because it is likely that Student will require services from DMH in order to access a FAPE. Parents contend that DMH's absence from the BSEA hearing could be prejudicial, and that full relief could not be accorded without DMH participation. On July 7, 2014 Parents, through DMH procedures, appealed DMH's denial of services stating that Student does have a qualifying diagnosis (Schizoaffective Disorder) and further stating that DMH had failed to state with any specificity the reason for the denial of services. Parents argue that Student's Schizoaffective Disorder symptoms have been intensifying over the past several years and that this psychiatric condition substantially interferes with Student's functioning across all areas.

GPS' position is that it supports PO and agrees that DMH is an essential party to this appeal. GPS also states that complete relief cannot be granted without DMH and that DMH participation is the most efficient way to resolve this dispute.

RULING

M.G.L.c.71B s.3 provides, in pertinent part:

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 [now called the Department of Children and Families], the department of mental retardation [now called the Department of Developmental Services], 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. See also 603 CMR 28.08(3) for corresponding regulation.

Although in this case Parents initially filed their hearing request against both GPS and DMH rather than filing a motion to join DMH, the rule for the joinder of additional parties is instructive. Pursuant to Rule IJ of the *Hearing Rules for Special Education Appeals – Joinder*:

Upon written request of a party, a Hearing Officer may allow for the joinder of a party 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

judgment entered in the proposed party's absence; and the existence of an alternative forum to resolve the issues.

Based upon the written documentation before me, the written and oral arguments advanced by the parties, and a review of the applicable law, I conclude that DMH's MTDI should be **DENIED** at this time.

My analysis follows.

I find that the standards for joinder have been met in the instant case. If Parents' DMH appeal is successful there is a risk of prejudice to Parents and GPS in the absence of DMH in this BSEA appeal; the risk of the inadequacy of a BSEA judgment entered in DMH's absence; and the real possibility that complete relief cannot be granted in this BSEA appeal..

As stated above, the Hearing Officer may determine, in accordance with the rules, regulations and policies of DMH, whether services shall be provided by DMH, in addition to the program and related services to be provided by GPS. DMH is correct that Student is not a DMH client and that, pursuant to its regulations, DMH has denied DMH services to Student. However, Parents immediately appealed DMH's initial denial of services, a DMH appeal hearing is pending, and said DMH hearing is expected to take place in the near future. Parents express great confidence that DMH will reverse its initial denial of services on appeal. Parents cite four psychiatric hospitalizations of Student over the past 2 ½ years for psychotic thoughts, suicidal ideation, and self-harming behaviors, with the last two hospitalizations occurring in the past three months (18 days in March-April 2014 and 13 days in June-July 2014). Parents also cite that Student's primary diagnosis, according to both her long time psychiatrist and treating psychologist, is Schizoaffective Disorder, which falls into the same DSM-V diagnostic class as Schizophrenia. Parents strongly believe that Student's primary diagnosis thus falls within DMH's clinical criteria. Parents also emphasize that Student's IQ falls within the average range.

Thus, there appears to be a substantial likelihood that the DMH appeal will find student eligible for DMH services. In such case, the BSEA could properly assert jurisdiction over DMH pursuant to DMH rules, regulations, and policies, if the Hearing Officer determines that DMH should provide services in addition to those provided by GPS. Given such circumstances, and in light of my finding, above, that the criteria for joinder have been met in this matter, I decline to grant DMH's MTDI at this time.

ORDER

1. DMH'S MTDI is **DENIED** at the present time.
2. A pre-hearing conference in this matter is hereby scheduled for August 13, 2013 at 10:00a.m. at the Bureau of Special Education Appeals, One Congress Street, Boston Massachusetts 02114.

By the Hearing Officer

Dated: July 24, 2014