

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

In re: Kevin¹

BSEA #1506955

**RULING ON WHITMAN-HANSON REGIONAL SCHOOL DISTRICT'S MOTION TO
DISMISS ITSELF AS A PARTY**

This matter comes before the Hearing Officer on a Motion filed by Whitman-Hanson Regional School District (hereinafter "Whitman-Hanson") to dismiss itself as a Party to this case before the Bureau of Special Education Appeals (hereinafter "BSEA"). Whitman-Hanson filed a Motion to Dismiss Itself as a Party (hereinafter "Motion to Dismiss") in this case on April 28, 2015. South Shore Vocational Technical High School (hereinafter "South Shore") filed an Opposition to Whitman-Hanson's Motion to Dismiss (hereinafter "Opposition") on May 11, 2015. Parents do not oppose the Motion to Dismiss, per their letter dated May 18, 2015. A telephonic motion session was held before Hearing Officer Amy Reichbach on May 19, 2015, during which the parties had the opportunity to supplement their written submissions with oral argument.

For the reasons set forth below, Whitman-Hanson's Motion to Dismiss is hereby ALLOWED.

FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

This case began with a Request for Hearing filed by the Parents of Kevin (hereinafter "Parents") through their Advocate on April 10, 2015 against South Shore and Whitman-Hanson. Parents argue that the transition services offered to Kevin by South Shore are inadequate to ensure his postsecondary success. In requesting a hearing, Parents seek additional transition services in the form of a one year Bridge Program at Thames Academy, an out-of-district placement, for which they assert that South Shore and Whitman-Hanson are obligated to provide full reimbursement.

The following facts are not in dispute and are taken as true for the purposes of this Motion. These facts may be subject to revision in subsequent proceedings.

1. Kevin is 18 years old. He currently resides with his parents in the town of Whitman, MA, which is part of the Whitman-Hanson Regional School District.

¹ "Kevin" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

2. Kevin has attended South Shore since September 2011.
3. Kevin has received services under an Individualized Education Program (IEP) throughout his time at South Shore.
4. According to South Shore's response to Parents' Hearing Request (hereinafter "Response") dated April 21, 2015, Parents previously requested that Kevin's graduation be delayed by one year, until June 2016. As a result of Parents' request, South Shore convened a meeting in January 2015, at which time a new IEP was proposed. It was dated 1/23/15-6/12/2015, and included additional goals with regard to study skills.
5. Under Kevin's most recent IEP, dated 1/23/15-6/12/15, he is slated to graduate with his peers on June 12, 2015.
6. Parents rejected that IEP.
7. Parents have asserted that Kevin did not receive the level of transition services required for post-secondary education, employment, and independent community living during his last two years of high school, and that at least one more year is necessary.
8. Parents contend that additional transition services in the form of a one-year placement at Thames Academy are necessary to prepare Kevin for post-secondary success.
9. On April 10, 2015, Parents filed a Hearing Request with the BSEA alleging the facts set forth in paragraphs 7 and 8, and seeking a determination that South Shore and Whitman-Hanson are responsible for the provision of these services.
10. In its Response, South Shore argues that its IEP dated 1/23/15-6/12/15 contains sufficient transition services to ensure Kevin's postgraduate success and that Kevin should graduate as planned on June 12, 2015.
11. On April 28, 2015, Whitman-Hanson filed a Motion to Dismiss², asserting that Whitman-Hanson has no responsibility for Kevin's education because he is not enrolled there and his Team has never determined that he requires an out-of-district placement pursuant to 603 CMR 28.10(6).
12. On May 11, 2015, South Shore filed its Opposition, asserting that even though it does not believe that Kevin requires an out-of-district placement, Whitman-Hanson should remain a party to the case because a Hearing Officer could determine that an out-of-district placement is required, thus triggering Whitman-Hanson's responsibilities under 603 CMR 28.10(6).

² This pleading also constituted Whitman-Hanson's Response to the Hearing Request.

13. In their letter dated May 18, 2015, Parents indicated that they do not oppose Whitman-Hanson's Motion to Dismiss.

DISCUSSION

In its Motion to Dismiss, Whitman-Hanson contends that it is not a necessary party to the case because Parents have failed to state a claim upon which relief can be granted against Whitman-Hanson. Specifically, Whitman-Hanson posits that because the requirements under 603 CMR § 28.10(6) to activate Whitman-Hanson's responsibility for Kevin's out-of-district placement have not been satisfied, South Shore is still responsible for Kevin and thus no relief may be granted against Whitman-Hanson at this time.³

In its Opposition, South Shore argues that Whitman-Hanson is a necessary party to the case because the Hearing Officer may find that Whitman-Hanson is responsible for providing services to Kevin. Though South Shore does not contend that Kevin requires an out-of-district placement, it asserts that if the BSEA finds that Kevin does require additional services, Whitman-Hanson could be held responsible for the provision of those services, either through a program in its district⁴ or through financial responsibility for an out-of-district program⁵ (e.g. the Bridge Program at Thames Academy).

Although generally a Motion to Dismiss may be granted if the party requesting the hearing fails to state a claim upon which relief may be granted through the BSEA, 801 CMR 1.01 (7)(g)(3) and BSEA Hearing Rules XVII (B)(4), in this case Whitman-Hanson has filed a Motion to Dismiss itself from the proceedings, which requires an assessment of whether Whitman-Hanson is properly before the BSEA as a party in this matter at this time. For this reason, although Parents initially filed their hearing request against both South Shore and Whitman-Hanson, the outcome will be governed by the rule for joinder of additional parties.

³ In its Motion to Dismiss, Whitman-Hanson also asserts that Parents' claims were for compensatory relief, and that complete relief could be granted against South Shore in the absence of Whitman-Hanson. In its Opposition, South Shore argues that this is not a compensatory relief case, but rather a prospective case to which Whitman-Hanson should properly be joined. After a discussion during the telephonic motion session on May 19, 2015, the parties agreed that Parents were not seeking compensatory relief.

⁴ See 603 CMR 28.10(6)(a)(2) ("The Team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the Team, and if so, the program school shall arrange with the school district where the student resides to deliver such services or develop an appropriate in-district program at the program school for the student"). In its Opposition, South Shore inadvertently cited to § 28.10(a)(2); it is clear from the text, however, that § 28.10(6)(a)(2) is the relevant provision.

⁵ See *id.* at § 28.10(6)(a)(3) ("If the placement Team...determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of-district day or residential school, depending on the needs of the student. Upon parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility shall return to the school district where the student resides.")

The BSEA's joinder rule, set forth in Rule I(J) of the *Hearing Rules for Special Education Appeals*, provides as follows:

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.

This mechanism can be used to join parties, such as Whitman-Hanson, that the BSEA may determine are responsible for the provision of services in a matter before it. Whether joinder is proper turns on Whitman-Hanson's potential responsibility for Kevin's education. Under section 1414 of the Individuals with Disabilities Education Act, a Local Educational Agency must have an IEP in effect for each child with disabilities under its jurisdiction.⁶ After the child reaches the age of 14, such IEP must contain the transition services needed to assist the child in reaching appropriate measurable postsecondary goals.⁷

In this case, it is alleged that Whitman-Hanson may be financially responsible for Kevin's additional transition services under 603 CMR 28.10(6). Section 28.10(6) dictates that a program school⁸ shall have programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law related to the program school. The regulation further dictates that, for vocational schools, when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type; shall notify the school district where the student resides within two school days; and shall proceed as follows:

1. Upon a determination [that a student may need an out-of-district placement], the program school shall schedule another meeting to determine placement, and *shall invite representatives of the school district where the student resides* to participate as a member of the placement team pursuant to 603 CMR 28.06(2)(e)(1).
2. The Team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the Team, and if so, the program school shall arrange with the school district where the student

⁶ 20 U.S.C. § 1414(d)(2)(A).

⁷ M.G.L. c. 71B, § 2.

⁸ "Program school" may refer to charter schools, Commonwealth of Massachusetts virtual schools, schools attended under M.G.L. c. 76, § 12A (Metco), or, as in this case, vocational schools. 603 CMR 28.10(6)(a).

resides to deliver such services or develop an appropriate in-district program at the program school for the student.

3. If the placement Team, in accordance with the procedures of 603 CMR 28.06(2)(e), determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of district day or residential school, depending on the needs of the student. Upon parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility *shall return to the school district where the student resides*. The school district where the student resides shall implement the placement determination of the Team consistent with the requirements of 603 CMR 28.06(3) (emphasis added).

Against this background, I apply Rule I(J) of the BSEA *Hearing Rules* and 603 CMR 28.10(6) to decide this Motion. The key issues here are whether complete relief can be granted from South Shore, and whether Whitman-Hanson 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. Rule I(J). As a vocational school, South Shore is considered a “program school” for the purposes of § 28.10(6)(a). Under that regulation, therefore, South Shore has “programmatic and financial responsibility for enrolled students” who have special education needs, except “when the Team determines that the student may need an out-of-district placement” and follows the procedures enumerated by the regulation to create financial responsibility on the part of “the school district where the student resides” (here, Whitman-Hanson). *See* 603 CMR 28.10(6). In this case, however, South Shore has consistently argued that it does not believe that Kevin requires an out-of-district placement.⁹ As a result, South Shore has not invited Whitman-Hanson to participate as a member of the placement team, nor has it followed any of the procedures set forth in section 28.10(6) that are required to create financial responsibility for Whitman-Hanson. As the BSEA has held previously, when no party contends that an out-of-district placement is necessary, the program school retains programmatic and financial responsibility over the student under section 28.10(6).¹⁰ Because South Shore does not contend that Kevin requires an out-of-district placement and has thus not fulfilled the requirements of section 28.10(6), Whitman-Hanson is not so situated that complete relief cannot be granted from South Shore or that the case cannot be disposed of without it. Although Whitman-Hanson may ultimately become involved in this matter, at this stage it is not a necessary party under Rule I(J).

⁹ *See* South Shore's Opposition, May 11, 2015.

¹⁰ *See In re: Natick Public Schools*, 17 MSER 457 (Crane, 2010) (allowing a Motion to Dismiss school district where student resided when program school did not determine that Student required an out-of-district placement); *In re: Brian*, 14 MSER 39 (Oliver, 2008) (“...603 CMR 28.10(6)(a) specifically provides that program schools...shall have programmatic and financial responsibility for enrolled students except when the program school believes that the student requires an out of district provide day or residential school placement”).

CONCLUSION

For the reasons discussed above, upon consideration of the documents submitted by the parties and the arguments made, I find that Whitman-Hanson is not a necessary party to this appeal. Whitman-Hanson's Motion to Dismiss Itself as a Party to the Parents' Hearing Request is hereby ALLOWED.

ORDER

Whitman-Hanson's Motion to Dismiss Itself as a Party to this appeal is ALLOWED.

A Pre-Hearing Conference is scheduled to take place on June 4, 2015.

By the Hearing Officer:

Amy M. Reichbach
Dated: June 3, 2015