

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

In re: Ricardo¹

#1606568

**RULING² ON MEDFIELD PUBLIC SCHOOLS' MOTION TO DISMISS ITSELF AS A
PARTY**

This matter comes before the Hearing Officer on a Motion filed by Medfield Public Schools (hereinafter "Medfield") to dismiss itself as a Party to a case before the Bureau of Special Education Appeals (hereinafter "BSEA"). Medfield requested an Order dismissing itself from the matter as part of its Response to the Parents' Hearing Request filed on February 24, 2016. None of the other parties involved in the matter has filed a written Opposition.³ No party requested a hearing on the Motion, and as testimony or oral argument would not advance the Hearing Officer's understanding of the issues involved, this Ruling is being issued without a hearing pursuant to *Bureau of Special Education Appeals Hearing Rule VII(D)*. For the reasons set forth below, Medfield's Motion to Dismiss Itself as a Party is hereby DENIED.

FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

This case began with a Request for Expedited Hearing filed by the Parents of Ricardo (hereinafter "Parents") on February 16, 2016 against Medfield, the LABBB Collaborative (hereinafter "LABBB") and Minuteman Regional High School (hereinafter "Minuteman"). The Parents alleged that Ricardo, a resident of Medfield whose Individualized Education Program (IEP) places him in LABBB's Career Directions Program at Minuteman, had been suspended for ten days following an incident involving another student. According to their *Hearing Request*, this incident occurred on January 27, 2016 and the subsequent disciplinary action resulted in a cumulative exclusion of twelve days during the current school year. Ricardo's Parents alleged that several procedural irregularities occurred in connection with his suspension, including failure to provide a disciplinary hearing and failure to secure the participation of Ricardo's full Team at the manifestation determination meeting that took place on February 3, 2016. The Team determined that Ricardo's conduct was a manifestation of his disability. Ricardo's parents have

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

² This Ruling is being reissued on March 16, 2016 in light of the response received from Minuteman Regional High School on March 9, 2016. See note 3, *infra*.

³ After the issuance of this Ruling, Minuteman clarified by way of letter on March 9, 2016 that it did not interpret the language in Medfield Public Schools' Response to the Parents' Hearing Request as a formal motion to dismiss and as such did not file an opposition, but that it does in fact object and oppose any dismissal of Medfield from this matter.

been informed that Minuteman will not permit him to return to his placement in the Career Directions Program. Medfield, as the Local Educational Agency responsible for Ricardo, has agreed to provide him with tutoring.

The Parents' *Hearing Request* includes, *inter alia*, allegations that LABBB and/or Medfield failed to convene a properly constituted Team to consider whether Ricardo's conduct was a manifestation of his disability; that the individuals present at the February 3, 2016 meeting (including Medfield's out-of-district coordinator) failed to consider whether Ricardo's behavior was a direct result of LABBB's failure to implement the IEP; that LABBB and/or Medfield has failed to conduct a functional behavioral assessment and to convene a Team to propose any placement for Ricardo; that the tutoring services offered by Medfield are insufficient; and that LABBB and/or Medfield failed to provide Ricardo with requisite notices relating to his due process rights. The Parents' proposed resolution includes a declaration that Ricardo's rights have been violated; an award of compensatory services; and an order that Ricardo return to his last educational placement in the Career Directions Program at Minuteman.

The matter was granted expedited status and a Hearing was scheduled to take place on March 7, 2016.⁴ Minuteman filed its Response to the *Hearing Request* on February 24, 2016. Medfield filed the above-referenced Response on February 24, 2016, and pursuant to an agreed-upon extension LABBB filed its Response on March 2, 2016. Following a Conference Call on February 26, 2016, the Parents filed a request that the matter be removed from the expedited track and the Hearing was continued until March 22, 2016 to allow the parties to explore alternative resolutions.

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. Ricardo is 17 years old. He resides in Medfield with his parents. (HR)
2. Ricardo's current IEP was proposed by Medfield. It is dated November 2, 2015 to November 1, 2016 and calls for placement in a public day school. (P-1; Medfield's Response to Parents' *Hearing Request* (hereinafter "Medfield Response"))
3. Pursuant to his IEP, Ricardo attends the LABBB Collaborative in the Career Directions Program at Minuteman. (P-1) He has been there since July 2013. (Medfield Response)

⁴ Due to administrative error, the original Notice of Hearing did not reflect the matter's Expedited Status. This was corrected and an Amended Notice of Hearing was sent to the parties the following day.

DISCUSSION

In its Motion to Dismiss, Medfield contends that it had no role in the recent incidents giving rise to the *Hearing Request* other than attending the manifestation determination meeting scheduled by LABBB and arranging for tutoring. It argues that none of Parents' claims are directed toward Medfield, and it should therefore be dismissed as a party to the action.

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 Medfield has filed a Motion to Dismiss itself from the proceedings, which requires an assessment of whether Medfield is properly before the BSEA as a party in this matter. For this reason, although Parents initially filed their hearing request against Medfield, LABBB, and Minuteman, the outcome of this Motion will be governed by the rule for joinder of additional parties.

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 that the BSEA may determine are responsible for the provision of services in a matter before it.

In the instant case, contrary to Medfield's assertions, Parents have framed several of their claims as against LABBB and/or Medfield, as described above. Moreover, even if Parents did not allege that Medfield itself had violated Ricardo's rights, Medfield is the LEA responsible for Ricardo's education. If I were to determine, for example, that Ricardo should not be returned to Minuteman, Medfield would convene Ricardo's Team to determine an appropriate placement for him. As such, application of the factors outlined above demonstrates that Medfield "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."⁵

⁵ Bureau of Special Education Appeals *Hearing Rule I(J)*.

CONCLUSION

For the reasons above, Medfield is a necessary party to this matter.

ORDER

Medfield's Motion to Dismiss Itself as a Party to this appeal is DENIED.

The Hearing is scheduled to take place on March 22, 2016.

By the Hearing Officer:

Amy M. Reichbach

Dated: March 3, 2016 (amended and reissued on March 16, 2016)