**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMININSTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In re: Vaughn[[1]](#footnote-1)** **BSEA #2203554**

 **#2202375**

**RULING ON ARLINGTON PUBLIC SCHOOLS’ MOTIONS TO JOIN MINUTEMAN REGIONAL VOCATIONAL TECHNICAL HIGH SCHOOL AND THE MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH**

 This matter comes before the Hearing Officer on two Motions filed by the Arlington Public Schools (Arlington or “the District”) in connection with a Request for Hearing filed against the District by Vaughn’s Parent on November 4, 2021.[[2]](#footnote-2) According to the *Hearing Request*, Vaughn has been hospitalized multiple times in the preceding year for dysregulation, aggression, and suicidal thoughts and requires a therapeutic residential placement in order to receive the intensive structured program that meets his emotional, academic, and social needs. Parent alleged that Arlington has failed to provide Vaughn with a free appropriate public education (FAPE) since at least April 2021, and requested that the Bureau of Special Education Appeals (BSEA) make such a finding. She also requested that the BSEA order Arlington to place Vaughn in a specialized therapeutic program such as JRI Meadowridge School and to provide compensatory services for its failure to provide Vaughn with a FAPE since April 2021.

On December 9, 2021, Arlington filed its *Response* to Parent’s *Hearing Request*. According to the District, Vaughn was enrolled in the Minuteman Regional Vocational Technical High School District (Minuteman) between September 2019 and April 27, 2021; because Minuteman carried full programmatic and fiscal responsibility for him during that time, all claims that accrued prior to April 28, 2021, are properly against Minuteman, not against Arlington. Furthermore, although Parent did not fully accept the Individualized Education Program (IEP) dated 6/22/2021 to 6/20/2022, which was proposed by Arlington on June 22, 2021 following reevaluation, she fully accepted the IEP for the period from 4/29/2021 to 3/23/2022 on May 15, 2021. As such, Parent’s claims relating to Vaughn’s re-entry IEP must be dismissed. Finally, Arlington argued that its proposed IEPs and placements for Vaughn were, and are, reasonably calculated to provide him with a FAPE, and that Parent’s request for residential placement is driven not by his educational needs but by his substance abuse, social maladjustment, and psychiatric medical treatment needs, which are not within the District’s special education obligations to Vaughn.

 Pursuant to the parties’ joint request, the Hearing was postponed for good cause to January 26, 2022. Following a Pre-Hearing Conference in December, the parties jointly requested further postponement to permit the District to complete a home assessment. This request was allowed for good cause and the Hearing was scheduled for March 2, 3, and 4, 2022. Arlington then filed the instant *Motion to Join Minuteman* and *Motion to Join DMH*. At the requests of DMH and Minuteman, and with the assent of the District and Parent, response deadlines to Arlington’s motions were extended to January 4 and January 11, 2022, respectively. Parent took no position regarding either *Motion*. After a postponement due to the illness of Counsel, a telephonic *Motion Session* was held on February 10, 2022. In the meantime, on January 31, 2022, Parent filed a request to postpone the Hearing for three months to permit Vaughn to transition to a day therapeutic placement and allow the parties to continue working together toward resolution. All parties assented to this request on February 10, 2022, and the Hearing was postponed for good cause to May 31, June 1, 2, 6, and 7, 2022.

For the reasons set forth below, the District’s *Motions* are both hereby ALLOWED.

RELEVANT FACTUAL BACKGROUND

 The following facts, which are drawn from the pleadings, are not in dispute and are taken as true for the purposes of this Ruling. These facts may be subject to revision in subsequent proceedings.

1. Vaughn is 16 years old. He lives with his mother in Arlington. (*Parent’s Hearing Request*)

2. Vaughn has a past psychiatric history of PTSD, ADHD, depression, and aggression. (*Parent’s Hearing Request*) His current diagnoses include Major Depressive Disorder, Attention Deficit Hyperactivity Disorder, and Cannabis Abuse. (*DMH* *Opposition*) There is no dispute that he is eligible for special education and related services.

3. Vaughn was accepted to, and attended, Minuteman for ninth grade during the 2019-2020 school year. He began tenth grade at Minuteman in the fall of 2020. (*Parent’s Hearing Request*)

4. Parent alleges that Vaughn faced racial harassment and bullying at Minuteman, which impacted his ability to access his education, and Minuteman failed to respond appropriately and plan for his disability-related needs while he was enrolled there. (*Parent’s Hearing Request; Motion to Join Minuteman*)

5. Although Vaughn was due for three-year reevaluations in June 2020, there is no evidence that Minuteman completed any evaluations of Vaughn during his enrollment. (*Motion to Join Minuteman*)

6. Between September 2020 and June 2021, Vaughn had seven emergency room visits, lasting from one day to two weeks, and he was psychiatrically hospitalized five times for periods from one week to over four weeks. (*Parent’s Hearing Request; Minuteman Opposition*)

7. Prior to Vaughn’s annual review in March 2021, Parent and Minuteman staff both expressed concerns that Vaughn required a therapeutic milieu, which Minuteman could not provide. Parent reached out to Arlington on February 2, 2021 to request residential therapeutic educational placement for Vaughn. Arlington was invited to, and attended, the Team meeting on March 24, 2021. (*Parent’s Hearing Request; Motion to Join Minuteman*)

8. In the meantime, Vaughn was hospitalized for the fifth time on March 5, 2021, where he remained until discharge on March 25, 2021. (*Parent’s Hearing Request*) During this hospitalization, Vaughn was referred for DMH eligibility. (*Motion to Join DMH; DMH Opposition*)

9. During the Team meeting on March 24, 2021, Arlington proposed placement in the Summit Program, a substantially separate therapeutic in-district program at Arlington High School. The District also proposed that evaluations be completed in its Millbrook assessment program, with supports from Summit. (*Motion to Join Minuteman*)

10. The IEP developed by Minuteman following the meeting, for the period from 3/24/2021 to 3/23/2022, proposed a full-inclusion program in Arlington, with co-taught core academics, pull-out academic support with a special education teacher, and weekly counseling. According to Parent, she partially accepted and partially rejected this IEP, but Arlington did not receive Parent’s response to the IEP, and Minuteman did not reach out to Arlington to arrange for its implementation. (*Parent’s Hearing Request*; *Motion to Join Minuteman*)

11. Vaughn enrolled in Arlington Public Schools on April 28, 2021*.* The District convened a meeting around that time to discuss his transition and issued an IEP and placement page for the Summit Program. (*Motion to Join Minuteman; Motion to Join DMH*) Parent accepted this IEP, dated 4/29/2021 to 3/23/2022, on May 15, 2022. (*Parent’s Hearing Request; Arlington’s Response*) The Team also proposed a reevaluation to be conducted as soon as possible, and Parent consented. (*Arlington’s* *Hearing Request*)

12. According to Parent, Vaughn remained at home without educational services from on or about March 25, 2021 until he began to attend Arlington in early May 2021. (*Parent’s Hearing Request; Motion to Join Minuteman*)

13. On June 22, 2021, the Team reconvened to review the results of Vaughn’s reevaluation and proposed an IEP shortly thereafter. This IEP, dated 6/22/2021 to 6/21/2022, listed Vaughn’s eligibility categories as Emotional Impairment, Health Impairment, and Neurological. It proposed a partial inclusion placement in Arlington’s Summit Program. Parent partially accepted this IEP, for implementation, on July 26, 2021. (*Motion to Join Minuteman; Motion to Join DMH; Arlington’s Hearing Request*)

14. In the meantime, on or about May 27, 2021, DMH found Vaughn eligible for services. Prior to that date, Parent was offered Children, Youth, and Family Short-Term services through DMH’s Flex Program, which consists of a wraparound, multi-disciplinary team. On June 16, 2021, DMH offered Parent Specialty Flex services, an intensive home-based clinical treatment team service with an Applied Behavior Analysis component. Parent did not follow up after a referral was submitted, and the referral ultimately closed. (*Motion to Join DMH; DMH Opposition*)

15. In or about August 2021, DMH authorized the family for Intensive Home-Based Therapeutic Care (IHBTC), the most intensive community-based model of services the agency provides to youth and families. Like Flex and Specialty Flex, IHBTC consists of a wraparound, multi-disciplinary treatment team, but also adds 24/7 face-to-face on call support and consultation with both OT and Psychiatry. At the time DMH filed its *Opposition*, Parent had yet to engage with IHBTC or almost all other services DMH had offered,[[3]](#footnote-3) though the family was receiving services through other providers. The offer of these services remained open, and Vaughn remained eligible. (*Motion to Join DMH; DMH Opposition*) The family has since engaged in some DMH services.[[4]](#footnote-4)

16. Parent obtained a private evaluation of Vaughn in September 2021. Dr. Koesterer diagnosed him with ADHD (Combined Type); an Executive Function Deficit; Major Depressive Disorder, Recurrent, Severe with Anxious Distress; Disruptive Mood Dysregulation Disorder; Posttraumatic Stress Disorder; Cannabis Use Disorder, Moderate; and Tobacco Use Disorder, Moderate. (*Parent’s Hearing Request*)

17. Vaughn’s school attendance declined sharply in the fall of 2021. With Parent’s assent, Arlington sent exploratory referrals for Vaughn to several therapeutic day programs in December 2021. DMH does not currently have any contracts with vendors who operate and provide GLE[[5]](#footnote-5) placements for youth in the Northeast Area, and as such, is not in a position to place Vaughn in one. (*Motion to Join DMH; DMH Opposition*)

LEGAL STANDARDS

 Pursuant to M.G.L. c. 71B, § 2A and 603 CMR 28.08(3), the BSEA has jurisdiction “to resolve differences of opinion among school districts, private schools, parents, and state agencies.” In the instant case, joinder is sought of both an additional local educational agency (LEA) and a state agency. A Motion to Join a state agency (herein DMH) in a pending case requires an analysis of both the rules for joinder of additional parties and BSEA jurisdiction to order that services be provided by that agency. Because the jurisdiction of the BSEA to order that a local educational agency (herein Minuteman) provide services has been clearly established, questions of joinder of additional LEAs involve only the first prong of the analysis.

 Pursuant to the BSEA’s joinder rule, set forth in Rule I(J) of the *Hearing Rules for Special Education Appeals*:

“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.”

Where this mechanism is used by parties to join a state agency (such as DMH), the extent to which the BSEA may order that agency to provide services to a student in a matter before it is set forth in Mass. Gen. Laws ch. 71B, § 3. Specifically, 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 children and families, the department of mental retardation [now 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.”[[6]](#footnote-6)

As such, to determine whether Minuteman and/or DMH should be joined in the present case, I must determine whether complete relief may be granted among those who are already parties, or the LEA and/or agency 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.[[7]](#footnote-7) As to Minuteman, the outcome of this analysis is determinative. As to DMH, if I find that the first prong suggests that joinder is appropriate, I must also then decide whether joinder of DMH is in accordance with the agency’s rules, regulations, and policies.[[8]](#footnote-8)

ANALYSIS

 *Minuteman*

In its *Motion to Join Minuteman*, Arlington contends that to the extent Parent’s request for compensatory services is based on allegations of bullying, racial harassment, and lack of responsiveness to Vaughn’s suspected disability (including a failure to propose reevaluations as Vaughn’s condition deteriorated and he was hospitalized repeatedly) from September 2019 to April 27, 2021, these claims involve Minuteman. Furthermore, to the extent the Hearing Officer finds that Arlington failed to propose an appropriate IEP for Vaughn upon his enrollment, such failure may have been caused by Minuteman’s failure to conduct timely evaluations of Vaughn in June 2020, or thereafter. Moreover, because Minuteman was fiscally and programmatically responsible for Vaughn through April 27, 2021, any claims based on an alleged violation of FAPE during this time, including Parent’s explicit request for compensatory services for the month of April 2021, involve Minuteman. For these reasons, Arlington would be prejudiced in the absence of Minuteman as a party. Finally, because complete relief cannot be granted without Minuteman, the District’s *Motion to Join Minuteman* should be allowed.

 In its *Opposition to Motion to Join*, Minuteman asserts that it is not a necessary party because Parent has not specifically named Minuteman in her complaint. Moreover, Minuteman contends that it reached out to Vaughn and Parent throughout the 2020-2021 school year, as Vaughn’s emotional and behavioral performance declined, thereby meeting its obligations. As such, Arlington’s reasons for joinder are outside the scope of the *Hearing Request* and beyond the requested relief. Minuteman has no interest in the outcome of the matter, complete relief may be granted in its absence, and it is not a necessary party.

 During the telephonic *Motion Session*, Parent clarified that she is seeking relief (including compensatory relief) only for the period of time that Vaughn has been enrolled in Arlington, beginning on or about April 28, 2021, and not for any time he was enrolled in Minuteman. Arlington maintained that Minuteman should still be joined, however, as its failure to propose and conduct timely reevaluations of Vaughn prior to his enrollment may have contributed to any potential violation of FAPE the Hearing Officer may find.[[9]](#footnote-9)

 As Parent has clarified that she does not seek compensatory services or other relief for any alleged violation of FAPE before April 28, 2021, this basis for joinder is moot. However, according to Arlington, Vaughn was due for reevaluations in June 2020; as the LEA programmatically and fiscally responsible for him at that time, Minuteman should have conducted them. Minuteman failed to do so. As a result, when Arlington had to develop an IEP and placement for Vaughn at the time of his enrollment nine months later, it was working with stale information, particularly as Vaughn’s mental health had deteriorated significantly during this time. After it conducted its own evaluations of Vaughn during the spring of 2021, Arlington proposed a second IEP, this one for the period from 6/22/2021 to 6/21/2022. To the extent I may find that the IEP developed in June was not reasonably calculated to provide Vaughn with a FAPE, that failure would be Arlington’s responsibility, as it had developed this IEP based on its own evaluative information. However, as Arlington argues, to the extent I find that the IEP proposed by Arlington following the Team meeting that occurred on April 29, 2021, (which was based on the IEP developed by Minuteman in March, at a time that Vaughn’s reevaluation was overdue), Minuteman may bear some of that responsibility, at least until such time as Arlington proposed the 6/22/2021 to 6/21/2021 IEP.[[10]](#footnote-10) For these reasons, although it may be possible to grant complete relief without joining Minuteman, Minuteman does have an interest in the subject matter, and Arlington bears the risk of prejudice in its absence. Under these circumstances, joinder is proper.

 *DMH*

In its *Motion to Join DMH*, Arlington argues that although Parent declined Flex services, Vaughn was determined to be, and remains, eligible for voluntary services from DMH. The Hearing Officer may determine that in order to access a FAPE, Vaughn requires residential placement for non-educational services, or that he does not require residential placement but does require additional non-educational supports in the home. Arlington submits that in either case, these services and/or supports are DMH’s responsibility. As such, there is a risk of prejudice to both Vaughn and Arlington in the absence of DMH, and the District’s *Motion to Join DMH* should be allowed.

 In its *Opposition*, DMH contends that Arlington seeks joinder of the agency for purely speculative and theoretical reasons, and no existing party is seeking a residential school placement, a cost-share for such educational placement, or any other specific service from DMH. Moreover, DMH has offered Parent a variety of services, which Parent has thus far declined. As such, no party is seeking any specific service that is available from DMH and that DMH is not currently willing to provide. For these reasons, DMH has no interest in the matter, the case can be disposed of in its absence, complete relief may be granted without its participation, and no party will be prejudiced by its absence. Joinder is therefore improper.

 During the telephonic *Motion Session*, DMH argued, further, that DMH staff would participate as witnesses in any Hearing and as such, its joinder is unnecessary. Further, both DMH and Parent advised that since the filing of the *Motion* and *Opposition*, the family has accepted, and is currently receiving, DMH services.

At this early stage in the case, I am aware that Vaughn has been struggling, that he has been hospitalized multiple times for reasons connected to his mental health, that DMH has found him eligible, and that he is currently engaged in DMH services. I cannot, at this time, determine the scope of Vaughn’s needs. Upon considering the evidence in the case on the merits, I may determine that Vaughn requires a residential placement for educational or non-educational purposes, or that in order to access his education, he requires home services, beyond those in which he is currently engaged. It appears, therefore, that the first part of the analysis weighs in favor of joinder. In its *Opposition*, DMH does not argue that joinder would contravene DMH’s own regulations in any way; the agency’s willingness to provide additional services and/or participate in a Hearing does not bear on this analysis.

Under these circumstances, joinder is proper.

CONCLUSION

In this matter, Parent asserts that Vaughn requires residential placement, in part as compensation for Arlington’s failure to provide a FAPE from April 28, 2021 to the date of filing. Arlington argues that to the extent Vaughn requires residential placement, such placement is for non-educational reasons and as such, would be DMH’s responsibility. As DMH has found Vaughn eligible for services, joinder in this matter would not contravene DMH’s rules, regulations, and policies. Moreover, as explained above, to the extent I determine that Arlington failed to propose an IEP reasonably calculated to provide Vaughn with a FAPE before June 22, 2021, I may find that such failure is, in part, Minuteman’s responsibility. Because I cannot say, at this stage in the case, that Arlington alone will be able to provide complete relief, or that Arlington would not bear the risk of prejudice in the absence of Minuteman and/or DMH, I find that both Minuteman and DMH are necessary parties to this matter.

**ORDER**

1. Arlington’s *Motion to Join Minuteman Regional Vocational Technical High School School* is hereby ALLOWED.
2. Arlington’s *Motion to Join the Department of Mental Health* is hereby ALLOWED.
3. A Pre-Hearing Conference in this matter will take place virtually, over Zoom, at 11:00 AM on April 7, 2022. The parties are directed to provide the Hearing Officer with the email addresses of all participants by close of business on April 4, 2022.
4. The Hearing will take place on May 31, June 1, 2, 6, and 7, 2922.

By the Hearing Officer:[[11]](#footnote-11)

 /s/ Amy Reichbach

Date: February 22, 2022

1. “Vaughn” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. [↑](#footnote-ref-1)
2. Arlington Public Schools (Arlington, or “the District”) filed a *Hearing Request* against the Student on September 14, 2021 involving Parent’s request for publicly funded independent educational evaluations. The Hearing was postponed for good cause several times. Pursuant to Parent’s request, that matter, BSEA #2202375, was consolidated with the instant matter on November 23, 2021. The consolidated Hearing has been postponed several times pursuant to joint requests. [↑](#footnote-ref-2)
3. According to DMH’s *Opposition*, the one service Parent had accepted at that time was referral to a Family Support Specialist, who assists families with navigating special education. [↑](#footnote-ref-3)
4. This update was provided by both Parent and DMH during the *Motion Session* on February 10, 2022. [↑](#footnote-ref-4)
5. In its *Opposition*, DMH referenced GLE placements but did not explain the abbreviation or describe the placements. [↑](#footnote-ref-5)
6. M.G.L. c. 71B, § 3; *see* 603 CMR 28.08(3) (corresponding regulations). [↑](#footnote-ref-6)
7. BSEA *Hearing Rule* I(J). [↑](#footnote-ref-7)
8. M.G.L. c. 71B, § 3. [↑](#footnote-ref-8)
9. Arlington also argued that as to its own *Hearing Request*, filed in response to Parent’s request for an independent educational evaluation (IEE), any shortcomings the Hearing Officer might find in Arlington’s evaluations, including the selection of tools, might be attributable to Minuteman’s failure to conduct timely evaluations. [↑](#footnote-ref-9)
10. Parent accepted this IEP. I do not, however, currently have any information as to whether it was rejected and/or implemented fully before Arlington proposed another IEP in June covering much of the same time period. As such, I cannot presently determine to what extent I would consider whether the 4/29/21 to 3/23/22 IEP was reasonably calculated to provide Vaughn with a FAPE. [↑](#footnote-ref-10)
11. The Hearing Officer gratefully acknowledges the assistance of legal intern Christopher Brosnahan in the preparation of this Ruling. [↑](#footnote-ref-11)