**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMININSTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Roberto[[1]](#footnote-1) BSEA # 2301475

**RULING ON WORCESTER PUBLIC SCHOOLS’ MOTION TO JOIN THE MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH**

 This matter comes before the Hearing Officer on the *Motion to Join the Massachusetts Department of Mental Health* (*Motion to Join*) filed by the Worcester Public Schools (Worcester, or the District) in a matter pending before the Bureau of Special Education Appeals (BSEA).

On August 10, 2022, Parent filed a *Hearing Request* against Worcester, seeking placement of Roberto at a private residential school in Massachusetts; an order prior to hearing to compel Worcester to fund a private neuropsychological evaluation (in an amount over and above the state-approved rate); and fees, costs, and any compensatory services owed. According to Parent, Roberto has been hospitalized frequently for dysregulation, aggression, and self-injurious behaviors, beginning when he was six years old. Since the beginning of the 2018-2019 school year, Roberto has been placed by Worcester at the Central Massachusetts Collaborative’s Hartwell Program (Hartwell) which placement Parent has rejected numerous times since January 2020. At Hartwell, Roberto receives intensive services to support his academic, therapeutic, and behavioral needs, in addition to the support of a 1:1 aide and specialized transportation with a 1:1 monitor. At the time the *Hearing Request* was filed, Roberto was residing at Three Rivers, a clinically intensive residential treatment program (IRTP) run by the Massachusetts Department of Mental Health (DMH), but the family had been informed that he would be unable to remain there past his thirteenth birthday in October 2022. Parent alleges that Worcester has failed to provide Roberto with a free appropriate public education (FAPE) and that Hartwell is a clinically inappropriate school placement.

 On August 29, 2022, Worcester filed its *Response* to Parent’s *Hearing Request*, asserting that Roberto’s current IEP, including placement at Hartwell, is reasonably calculated to provide Roberto with a FAPE in the least restrictive setting; that it did not violate the Individuals with Disabilities Education Act (IDEA); and that a residential placement would be unnecessary and overly restrictive. Worcester further opposed Parent’s request for an independent neuropsychological evaluation above state-approved rates at the present time, as Parent has consented to the District’s own evaluation of Roberto, which should proceed first.

 On August 30, 2022, Worcester filed the instant *Motion to Join* on the grounds that complete relief cannot be granted in the absence of DMH. Worcester asserts that DMH has provided, and continues to provide, in-home behavioral services to Roberto; Roberto is currently placed at a DMH residential treatment program; once Roberto has aged out of Three Rivers, DMH intends to place him at a new DMH group home in Northborough, MA; and Roberto has not been determined eligible for discharge from DMH residential care at this time. As such, Worcester contends that DMH is the appropriate entity to provide the medical and psychiatric treatment Roberto requires to attain the stability necessary to access a FAPE. According to the District, should I find that Roberto requires a residential placement for non-educational reasons, I could order DMH to fund the residential portion of a school placement, consistent with DMH policy. Furthermore, even if I agree with Worcester that a residential placement is not necessary, because of Roberto’s intensive involvement with DMH, I may order the agency to provide him with additional home-based services.

 On September 9, 2022, DMH filed an *Opposition* to Worcester’s *Motion to Join*, claiming it has no interest in this matter and that complete relief can be granted amongst the existing parties. Moreover, according to DMH, the BSEA would not be able to order the agency to provide the relief Mother is seeking because an order for DMH to fund a residential placement for Roberto would contravene DMH’s policies.

 On September 13, 2022, a *Motion Session* was held, where Worcester and DMH reiterated their positions, and Parent, through counsel, orally expressed her support for joinder of DMH as a party to the matter.

 A Pre-Hearing Conference was held on September 22, 2022. During this proceeding the parties shared that Roberto had been discharged from Three Rivers to group care under the auspices of DMH, prior to his thirteenth birthday the following month.

 For the reasons set forth below, Worcester’s *Motion to Join* is hereby ALLOWED.

RELEVANT FACTUAL BACKGROUND

 The following facts 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. Roberto is a resident of Worcester, Massachusetts. He is currently in the sixth grade and recently turned thirteen years old.
2. At the time Worcester’s *Motion to Join* was filed, he was placed at the Three Rivers IRTP (Three Rivers). Prior to his placement at Three Rivers, which included attendance at an affiliated school, Roberto attended the Central Massachusetts Collaborative’s Hartwell Learning Center (Hartwell), a public day school where he received intensive services to support his academic, therapeutic, and behavioral needs. He also received the support of a 1:1 aide and specialized transportation with a 1:1 monitor.
3. Roberto has been diagnosed with Post-Traumatic Stress Disorder (PTSD), Attention-Deficit Hyperactivity Disorder (ADHD) – Combined Type, Frontal Lobe Executive Functioning Deficit, and Specific Learning Disabilities in Readin, and Written Expression. Roberto had a prior Autism Spectrum Disorder diagnosis until it was ruled out by a neuropsychological evaluation on May 31, 2021.
4. Roberto experienced trauma in the home at a young age, which contributed to his PTSD diagnosis.
5. On May 14, 2017, at age six, Roberto was hospitalized for the first time at the Wetzel Center Community Based Acute Treatment (CBAT) Program, after exhibiting escalating aggressive behaviors at both home and school.
6. At Parent’s request, Roberto was evaluated and found eligible for an Individualized Education Program (IEP) under the primary disability category of Emotional Impairment. He was placed at Hartwell on August 27, 2018.
7. Roberto has experienced frequent hospitalizations and CBAT admissions due to his aggressive and self-injurious behaviors, which included threats to kill classmates and himself. Between February 2018 and November 2020, he was assessed by the Crisis Team 16 times, hospitalized four times, and admitted to four CBAT facilities. He was physically restrained at school multiple times and received a substantial number of “major referrals.” Following a hospitalization in December 2019, Roberto was absent 38 days during the 2019-2020 school year. Roberto was again admitted to the hospital in May 2020, after threatening his mother with a knife in the home; during this hospitalization, he required multiple physical and chemical restraints and seclusions.
8. The hospital referred Roberto to Three Rivers, where he was admitted for the first time on September 15, 2020. Three Rivers is the most intensive and only residential treatment setting in Massachusetts for children under the age of 13. Three Rivers offers a 1:2 staff to child ratio, frequent therapy sessions, and a high level of involvement by the program psychiatrist. At Three Rivers, Roberto attended a full day of school on campus in classes of no more than four students, supported by a special education teacher and a program counselor. On May 11, 2021, toward the end of Roberto’s initial stay at Three Rivers, Boston Children’s Hospital (Children’s) conducted a neuropsychological evaluation and recommended trauma-informed school behavioral support and evidence-based trauma support regulation. Children’s did not recommend a residential educational program.
9. On July 1, 2021, Roberto was discharged from Three Rivers directly to home. Upon his discharge, DMH provided in-home behavioral services through Open Sky, including a milieu of clinicians (in-home therapists, in-home behaviorists, and coordinators).
10. Roberto’s transition back to Hartwell was marked by transportation issues; as such, he was often dysregulated upon his arrival at school, and he exhibited tantrums upon his return home.
11. On September 9, 2021, Roberto’s aggression, self-harm behaviors, and property destruction at home escalated; he punched holes in walls, threw items, hit, and threatened his mother. In response, DMH increased Roberto’s in-home services.
12. During September, Roberto was also becoming increasingly dysregulated at school, requiring physical restraints and seclusions. At a Team meeting on October 1, 2021, Parent contended (not for the first time) that Hartwell was not the appropriate placement for Roberto, contrary to Worcester’s position.
13. On November 11, 2021, the Team met to discuss Roberto’s safety plan. Parent alleged that Hartwell had not been implementing Roberto’s IEP properly and had not been responding appropriately to Roberto’s episodes of dysregulation, in light of his PTSD.
14. In January and February 2022, Roberto was hospitalized at UMass Memorial Hospital on multiple occasions. After one incident requiring hospitalization, Parent wrote in an email to DMH that she was concerned for Roberto’s and her safety, and that she believed Roberto required the level of specialized care that Three Rivers provided. Roberto was ultimately transferred from UMass Memorial Hospital to Westborough Behavioral Hospital (Westborough) on February 15, 2022. Throughout March and April 2022, Westborough physically and chemically restrained Roberto on several occasions.
15. On February 18, 2022, Parent contacted the Executive Office of Health and Human Services to assist with treatment planning.
16. At a clinical meeting on February 23, 2022, Parent reiterated her position that Roberto needs residential care to be safe and learn appropriate skills. Roberto’s in-home therapist stated that when Roberto first returned home from Three Rivers, he had been able to remain safe, but after some time, Open Sky was responding to the home almost daily for unsafe behaviors, and the team could only do so much in the home.
17. At a Team meeting on March 15, 2022, Hartwell reported that Roberto had been absent 47 out of 119 days and had missed a month and a half of the summer semester. Worcester continued to propose placement at Hartwell with the support of a 1:1 aide during academics, counseling services, social services, social skills, reading services, and occupational therapy.
18. On March 16, 2022, Roberto joined his clinical team meeting and asked if he could return to Three Rivers. In response, Worcester told Parent that the District would be willing to cost-share a residential placement with DMH, but DMH declined.
19. On May 12, 2022, Roberto was admitted to Three Rivers for the second time, following significant incidents of agitation, aggression, and dysregulation during his stay at Westborough.
20. DMH had stated that Roberto would be unable to remain at Three Rivers past his thirteenth birthday in October, 2022. On July 12, 2022, in anticipation of Roberto’s discharge from Three Rivers, Parent renewed her request for a residential school placement. DMH shared with Parent on July 26, 2022, and again at the *Motion Session* on September 13, 2022, that it is opening a new intensive group care setting for children of Roberto’s age, and that Roberto could step down to that program from Three Rivers in October. During the Pre-Hearing Conference, the parties shared that Roberto had transferred to this group care setting. However, it is unclear how long Roberto will be eligible to remain there.

LEGAL STANDARDS

The BSEA *Hearing Rules for Special Education Appeals* (*Hearing Rules*) and Mass. Gen. Laws ch. 71B, § 3 set out the criteria for joinder of a party to a BSEA due process hearing. Pursuant to BSEA *Hearing Rule* I(J):

“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.”

Here, the District is seeking joinder of a state agency. The BSEA in fact has jurisdiction to resolve “differences of opinion among school districts, private schools, parents, and state agencies.”[[2]](#footnote-2) However, the relief the BSEA may order state agencies to provide is limited by Mass. Gen. Laws ch. 71B, § 3, which states:

“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.”[[3]](#footnote-3)

Thus, to decide whether DMH should be joined as a party in the instant matter, I must determine, upon consideration of the joinder factors, whether complete relief may be granted among those who are already parties, or if DMH 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.[[4]](#footnote-4) I must then also decide whether joinder of DMH is in accordance with the agency’s rules, regulations, and policies.[[5]](#footnote-5) The central question here is whether “additional services from the state agency (over and above those services that are the responsibility of the school district) may be necessary to ensure that the student will be able to access or benefit from the school district’s special education program.”[[6]](#footnote-6)

ANALYSIS

 In its *Motion to Join*, Worcester asserts that joinder of DMH is appropriate because after a hearing on the underlying case, I may find that, in order to receive a FAPE, Roberto requires services over and above those that are the District’s responsibility, and that DMH is the appropriate entity to provide those services, given the agency’s extensive involvement with Roberto and his family. Such services could include residential placement or other home-based services and treatment to enable Roberto to achieve the medical and psychiatric stability he needs to access the District’s special education program.[[7]](#footnote-7)

 In its *Opposition*, DMH argues that any need for additional services beyond those provided by the District is entirely speculative, and Worcester does not identify any services that would be ordered beyond those that DMH has already implemented. DMH further contends that if I were to find that Roberto requires a residential school placement, as Parent asserts, I could not order DMH to fund such placement as it would contravene DMH’s policy. As such, DMH claims that it has no interest in this matter, and that complete relief can be granted in its absence.

 As discussed above, Roberto has been struggling with his emotional and behavioral regulation, has been hospitalized and placed in CBATs numerous times since the age of six for reasons connected to his mental health, and is currently engaged in DMH services in a group care setting. I cannot, at this early stage in the case, determine the scope of Roberto’s needs. After a hearing, I may find that Roberto’s placement at Hartwell, in combination with the in-home services that DMH currently provides, is sufficient for Roberto to access a FAPE (as Worcester asserts may be possible). Alternatively, I may find that additional home-based services that are not currently being provided must be provided by DMH, that Roberto requires continued placement at the new DMH-run intensive group care setting for a specified period of time, or that Roberto requires a residential school placement (as Parent contends). Regardless of whether I find that Roberto requires additional services from DMH or that DMH must simply continue providing its current level of supports, DMH likely has an interest in the matter, as Roberto is currently in DMH residential care and will continue to reside in DMH care for the foreseeable future. It appears, therefore, that the first part of the analysis weighs in favor of joinder.

 I cannot, however, order DMH to provide any services, residential or home-based, if to do so would contravene DMH’s own regulations. Pursuant to its policy, DMH cannot fund a residential school placement for educational purposes.[[8]](#footnote-8) DMH can, however, fund a residential placement when a DMH-service authorized youth cannot safely live at home due to the youth’s serious emotional disturbance or serious mental illness.[[9]](#footnote-9) In accordance with its policies, DMH will provide residential intervention for the shortest period of time necessary.[[10]](#footnote-10) After an evidentiary hearing, I may find that Roberto requires a residential school placement for educational purposes, in which case responsibility would lie with the District and I could not order DMH to provide any funding. Alternatively, I may find that Roberto requires a residential placement for non-educational purposes, so as to enable him to access a FAPE, and thus ordering DMH to fund such a placement would comply with DMH’s policy. Although Parent requests a long-term residential placement, which would likely contravene DMH’s policy, I may decide that Roberto requires a residential placement for a shorter time period or for the amount of time DMH deems clinically necessary, in accordance with DMH policy. Thus, it is possible that I will find that Roberto requires remedies that fall within DMH’s purview, and that providing appropriate services is consistent with DMH’s rules and regulations.

 As I cannot rule out these possibilities at this time, joinder of DMH is appropriate. Joinder does not mean I will order DMH to provide any additional relief, but to decline to join the agency would preclude me from doing so were it determined to be necessary. DMH may have an interest in the matter, and because I may not be able to fashion the complete relief needed to support Roberto’s needs, or otherwise enter an appropriate judgment after a hearing, in the agency’s absence, the risk of prejudice to the present parties in the absence of joinder is great. Moreover, as the agency has been instrumental in Roberto’s care thus far and DMH witnesses are likely to participate in the hearing, joining DMH would foster administrative efficiency.

CONCLUSION

 For the foregoing reasons, DMH is a necessary party in this matter and joinder is proper.

**ORDER**

1. Worcester’s *Motion to Join the Massachusetts Department of Mental Health* is hereby ALLOWED.
2. The Hearing will take place via Zoom on November 29 and 30 and December 1, 2022 beginning at 10:00 AM each day. Exhibits and witness lists are due by close of business on November 18, 2022, with a copy to the Court Reporter.

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

 /s/ Amy M. Reichbach

Dated: October 3, 2022

1. Roberto is a pseudonym chosen by the Hearing Officer to protect the student’s identity in documents available to the public. [↑](#footnote-ref-1)
2. Mass. Gen. Laws ch. 71B, § 3; see 603 CMR 28.08(3). [↑](#footnote-ref-2)
3. M.G.L. c 71B, § 3 (emphasis added); see603 CMR 28.08(3). [↑](#footnote-ref-3)
4. See BSEA *Hearing Rule* I(J). [↑](#footnote-ref-4)
5. See M.G.L. c. 71B, § 3. [↑](#footnote-ref-5)
6. See *Lowell Public Schools*, BSEA 072412, 107 LRP 65543 (Crane 2007). [↑](#footnote-ref-6)
7. See *id*. [↑](#footnote-ref-7)
8. See *DMH Policy* 19-02. [↑](#footnote-ref-8)
9. *See id*. [↑](#footnote-ref-9)
10. *See id.* [↑](#footnote-ref-10)
11. The Hearing Officer gratefully acknowledges the diligent assistance of legal Sofia Zocca in the preparation of this Ruling. [↑](#footnote-ref-11)