**COMMOWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re:** Parents v. **BSEA #** 2406469

Agawam Public Schools &

C-Tech (Lower Pioneer Valley Educational Collaborative

Career and Technical Education Center)

**RULING ON AGAWAM PUBLIC SCHOOLS’**

**MOTION TO DISMISS AS A PARTY**

Parents requested a Hearing in the above-referenced matter on January 8, 2024. On January 18, 2024, Agawam Public Schools (Agawam) filed a School Response to Hearing Request and Motion to Dismiss Agawam as a Party to the Action. Neither Parents or Lower Pioneer Valley Educational Collaborative Career and Technical Education Center (C-Tech) filed objections to Agawam’s Motion within the 7 calendar days allowed under Rule VI of the *Hearing Rules for Special Education Appeals*.

Upon consideration of Agawam’s submission and Parents’ Hearing Request, Agawam’s Motion is denied, as explained below.

**Facts**:

The facts herein are taken to be true for purposes of this Motion only.

1. Student is a fifteen-year-old eligible special education student who is a resident of Agawam.
2. Student has been found eligible under Communication and Autism diagnoses. He has also been diagnosed with Anxiety.
3. Student is a ninth grader placed in a substantially separate classroom in Agawam High School, which program he attends for half a day. He also attends the C-Tech Vocational School’s carpentry program for half a day.
4. According to Parents, Student has been bullied in the C-Tech program by two individuals, and thus feels unsafe in that program.
5. As a result of an incident at C-Tech in early December of 2023, Student stopped attending the C-Tech portion of his program.
6. Parents’ Hearing Request raises allegations of bullying and seeks among other remedies[[1]](#footnote-1),

…a compensatory service plan for the time missed at C-tech and an Order for Agawam to find and place the student in a carpentry program with a 1:1 aide for safety and academic needs that are supported through evaluations.

1. On January 26, 2024, Parents’ advocate reported via email that it had resolved the portion of Parents’ case involving Agawam, and thus informally requested that Agawam be withdrawn as a party. Parents further noted the desire to proceed to Hearing with C-Tech as the sole opposing party.[[2]](#footnote-2)

**Legal Standard**:

The legal analysis involved in a determination regarding the need for a party to remain involved in a legal action is akin to the analysis involved in joinder of a party.

Rule 1J of *The Hearing Rules for Special Education Appeals* sets the standards for joinder, and thus provides guidance as to the elements necessary for the determination of a party’s participation in a BSEA hearing. This rule provides that a Hearing Officer may join a party upon finding that

1. complete relief cannot be granted among those originally named parties or,
2. the party being joined has an interest in the matter and is so situated that the case cannot be disposed of in its absence.

Pursuant to Rule 1J certain factors must be considered when determining if joinder is warranted; those are:

1. risk of prejudice to the present parties;
2. the range of alternatives for fashioning relief;
3. the inadequacy of a judgment entered in the proposed party’s absence; and
4. the existence of an alternative forum to resolve the issues.

Pursuant to Rule 1J, the party seeking joinder “must be able to show, at least in a preliminary way, that it will be able to present evidence at a Hearing that may result in the entity being found responsible to offer some service…to the student”[[3]](#footnote-3), or, as in the instant case, the converse, that its presence is not required in providing FAPE to a student, since in the context of a special education hearing, party status is determined by the responsibilities an entity may have regarding the provision of FAPE to a student. Thus, the determination of whether Agawam may be dismissed as a party in the instant matter turns on Agawam’s responsibility for the provision of services to Student and whether complete relief may be granted in its absence.

**Conclusions of Law**:

In the instant case, Agawam argues that it was included as a party solely as a result of its no trespass order against one Parent, which issue falls outside the purview of the BSEA, and further, that this issue has been resolved informally. Agawam further asserts that no other active dispute involving the provision of special education services is ripe, or exists between Agawam and Parents, and Parents have failed to raise any issues that are ripe for adjudication. (Agawam and Parents have agreed to explore additional educational options available to Student through Agawam.)[[4]](#footnote-4)

Agawam’s request for dismissal as a party does not discuss or consider the remaining allegations in Parents’ Hearing Request involving bullying, and fails to address what responsibilities Agawam may bear regarding at least one of the remedies sought by Parents, i.e., that Student be provided with placement in a carpentry program with a one-to-one aide for safety and to support his academic needs.

No party at this Hearing has provided an IEP or submitted any other legal or factual argument to support a finding that C-Tech is a completely independent program from Agawam, that it is solely responsible for implementation of Student’s accepted IEP services so as to provide him a FAPE, or that it developed its own IEP for Student and is solely responsible for the delivery of FAPE while he attends classes in its building. To the contrary, it would appear that C-Tech provides a different location for provision of the vocational courses Student is taking as part of an IEP developed by Agawam.

Under the IDEA and M.G.L. c. 71B , school districts are responsible for provision of FAPE to eligible students through development of appropriate IEPs, delivery of services and placements. Lacking critical information to enter a determination to the contrary, as the drafter of an accepted IEP and the entity ultimately responsible for provision of services and delivery of a FAPE to Student, Agawam may have more responsibilities toward Student than it has acknowledged, or Parents articulated in the Hearing Request.

Parents’ Hearing Request alleges that Student is unsafe in his C-Tech carpentry class and that he requires a one-to-one aide to stay safe in that class and to access a FAPE so that he may benefit from his education. In light of this, Agawam’s argument regarding ripeness as to additional future options to be discussed with Parents is unpersuasive as at least one of Parents’ allegations and remedies is ripe. Without additional information and legal arguments relating to Agawam’s and C-Tech’s special education responsibilities toward Student and the provision of a FAPE, allowing Agawam’s dismissal as a party poses a high risk of prejudice to the remaining parties and may render any judgment as against the remaining parties (Parents and C-Tech) inadequate.

Agawam has failed to demonstrate that it does not have an interest in this matter or that the case may be disposed of in its absence. Since complete relief cannot be granted in Agawam’s absence, its request to be dismissed as a party is **DENIED**.

**ORDER**:

1. Agawam’s Motion to be Dismissed as a Party is **DENIED**.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

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Rosa I. Figueroa

Dated: January 29, 2024

1. Parents’ Hearing Request also seeks that a “no-trespass order” against one Parent be removed, and unspecified “appropriate relief identified in this Hearing”. [↑](#footnote-ref-1)
2. Parents’ request was not submitted in a formal manner; she did not file a motion to withdraw Agawam as a Party and did not Amend the Hearing Request to reflect withdrawal on certain Hearing issues. In its current form, Parents’ advocate’s email serves only as notice of her intent. [↑](#footnote-ref-2)
3. See *In re. Boston Public Schools District*, BSEA #02-4553 (2002). [↑](#footnote-ref-3)
4. Agawam notes that, “A case is ripe for adjudication when it involves a live dispute with concrete injury or harm, and no further factual development is necessary for the court or administrative body to make a meaningful decision *United Public Workers v. Mitchell*, 330 U.S. 75 (1947), *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967). A case is not ripe if it is based on contingent future events that may never occur. Ripeness requires a concrete and specific injury or harm that is certain to happen. *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974)”. [↑](#footnote-ref-4)