

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

In re: Student v. Middleborough Public Schools

BSEA #1911053

**RULING ON MIDDLEBOROUGH PUBLIC SCHOOLS' MOTION TO JOIN THE
DEPARTMENT OF MENTAL HEALTH**

This ruling is rendered pursuant to M.G.L. chapters 30A and 71B; 20 U.S.C. §1400 et seq.; 29 U.S.C. §794; and the regulations promulgated under these statutes. In rendering this ruling the Hearing Officer has considered all documents submitted by the parties, all written argument submitted by the parties, and the oral arguments presented during the June 24, 2019 hearing on the instant Motion.

BACKGROUND

Parent filed the above hearing request with the BSEA against Middleborough Public Schools (MPS) on May 20, 2019. Due to what Parents characterize as Student's profound social, emotional, and behavioral difficulties, they are seeking a decision that she requires a residential placement at a Justice Resource Institute (JRI) facility in order to receive a free appropriate public education (FAPE). MPS filed a response to the Hearing Request on June 3, 2019. In its response, MPS does not dispute the nature and scope of Student's needs, but argues that a day placement rather than a residential placement is appropriate and will provide Student with a FAPE in the least restrictive setting. To the extent that Student requires additional services to address mental health needs that are greater than what a public school can provide or is obligated to provide under the IDEA, MPS argues that the Department of Mental Health (DMH) has provided, and could be ordered by the Hearing Officer to provide, such additional services. Middleborough filed the instant *Motion to Join* DMH on June 3, 2019. DMH filed an opposition to Middleborough's *Motion* on June 18, 2019 and a hearing on the Motion, in which DMH, MPS, and Parent were represented, was held on June 24, 2019.

BRIEF HISTORY/ STATEMENT OF THE CASE

Student is a 14-year-old resident of Middleborough. She attends Nichols Middle School where she receives special education services through the district's substantially separate Summit Program. Student has been diagnosed with Reactive Attachment Disorder, Post-traumatic Disorder, Disruptive Mood Dysregulation Disorder, Major Depressive Disorder; Oppositional Defiant Disorder, Specific Learning Disorders, and ADHD. In addition to special education services through MPS, Student receives numerous outside therapeutic services including participation in a therapeutic after-school program run by DMH. From January 2018 to May 2019, Student required seven inpatient psychiatric hospitalizations in the context of hallucinations, assaultive aggression/ rage, self-injurious behavior, suicidal ideation, highly sexualized behavior, and a suicide attempt by overdose.

Most recently on May 6, 2019, Student was re-hospitalized at the Southcoast Behavioral Health Hospital after telling a school staff member and personal therapist that she planned to commit suicide. Student's therapist required her to be evaluated by a crisis worker. Following an evaluation, the crisis team decided to admit Student to an inpatient unit. Student has recently been released from Southcoast Behavioral Health Hospital and Parents are seeking immediate and ongoing placement.

STATEMENT OF POSITIONS REGARDING JOINDER OF DMH

MPS takes the position that DMH is a necessary party to this matter. MPS argues that a therapeutic day placement would provide Student with a FAPE in the least restrictive environment. To the extent that Student may need additional supports, up to and including residential placement, MPS argues that these supports are for non-educational reasons and as such, they may be the responsibility of DMH. According to MPS, DMH has an interest in the case and is so situated that the case cannot be decided in its absence as Student is eligible for and has received services through DMH. (See BSEA Hearing Rule (1)(J).) As such, MPS seeks a consolidated determination about what the student requires in order to address both her educational and non-educational needs.

DMH opposes joinder. DMH argues that Student has been denied DMH services and is not currently authorized to receive DMH services. According to DMH, it received the application submitted by Parent seeking DMH services and determined that although Student met the clinical criteria, she was not authorized to receive services under the "needs and means" component of the agency's service authorization process. (See 104 CMR 29.04(4)). According to DMH, its decision regarding Student's eligibility to receive services was not appealed, thus the denial is considered a final agency determination. Though DMH is currently providing services in the form of a therapeutic after school program, the agency contends that its regulations allow the provision of a single, limited service to a child who is not otherwise eligible to receive DMH services. (See 104 CMR 29.04(1)(i)). Therefore, DMH argues, the single service that Student is receiving does not provide a basis for BSEA jurisdiction. As such, DMH further argues that because the BSEA does not have jurisdiction to overturn DMH's denial of service authorization and cannot, as a result, order DMH to provide services to an individual it has determined is not eligible for service, DMH is not a necessary party and complete relief can be granted among the existing parties.

Parent takes no position as to whether or not DMH should be joined as a Party to this matter.

RULING

Based upon the documents, and oral and written arguments offered at the hearing on the Motion, in conjunction with a review of the applicable law, Middleborough Public Schools' Motion to Join the Department of Mental Health is **DENIED**.

My analysis follows:

Rule (1)(J) of the *Hearing Rules for Special Education Appeals* provides, in its entirety:

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.

603 CMR 28.08(3) defines the jurisdiction of the BSEA, and specifies as follows, with regard to the BSEA's jurisdiction over the state agencies:

The jurisdiction of the Bureau of Special Education Appeals over state agencies, however, shall be exercised consistent with 34 CFR §300.154(a). *The 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 Social Services, the Department of Mental Retardation, The Department of Mental Health, the Department of Public Health, or any other state agency or program, in addition to the IEP services to be provided by the School district. (Emphasis added)*

603 CMR 28.02(19) provides, in its entirety: "State agency shall mean a Massachusetts state agency."

The issue of joinder of a state agency and, more particularly, DMH, has been considered frequently over time by BSEA Hearing Officers. Prior Rulings are instructive in the instant matter.

"[A] BSEA Hearing Officer may require DMH to provide additional services but only in accordance with the DMH rules, regulations, and policies. It cannot be disputed that the DMH rules, regulations, and policies preclude DMH from providing services to someone who has not been determined eligible for its services."¹ And, as Hearing Officer Rosa Figueroa found, "one of the threshold questions in ascertaining whether the DMH may be a necessary party is whether Student has been determined eligible to receive the DMH services."² Accordingly, joinder may only be proper where the student has either been found eligible for DMH services or has a pending eligibility application open with DMH. Where "it is clear that DMH currently does not have a pending eligibility application for Student and it has yet to make a formal determination of whether Student is eligible for its services, parent may re-file an application or may reinstitute the withdrawn application, and DMH would then formally determine whether Student is eligible for services."³ Once DMH makes a final agency determination regarding a student's eligibility, regardless of whether the determination was based on the clinical or "needs and means"

¹In Re: Stoughton Public Schools, Department of Developmental Services, and Department of Mental Health, BSEA No. 1406800 (Crane, 2014).

²In Re: Boston Public Schools BSEA No. 06-5402 (Figueroa, 2006)

³In Re: Stoughton Public Schools, Department of Developmental Services, and Department of Mental Health, BSEA No. 1406800 (Crane, 2014).

component of DMH's service authorization process,⁴ the BSEA does not have the authority to overturn DMH's decision.

In conclusion, given that DMH has made a final agency determination that Student is not eligible to receive services, and the BSEA does not have jurisdiction to overturn DMH's determination, I am obliged to conclude that I have no authority to order joinder of DMH and must find that DMH is not a necessary party to this matter, at this time.

ORDER

Middleborough's Motion to Join the Department of Mental Health is **DENIED**.

By the Hearing Officer,

Raymond Oliver

Dated: July 9, 2019

⁴In re: Oliver v. Falmouth Public Schools, BSEA No. 1906369 (Reichbach, 2019).