

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

Bureau of Special Education Appeals

In Re: Student
&

BSEA No. 2004507

Winchendon Public Schools

**RULING ON MOTION OF WINCHENDON PUBLIC SCHOOLS TO JOIN THE
BOSTON PUBLIC SCHOOLS AS A NECESSARY PARTY**

This matter comes before the BSEA on *Winchendon Public Schools' Motion to Join Boston Public Schools ("Motion")* as a necessary party in this action. The following background information is gleaned from the parties' submissions and additional representations by counsel, and is adopted for purposes of ruling on this *Motion* only.

Student is a fifteen-year-old child who is eligible for special education services. Until approximately January 2019, Student was enrolled in the Boston Public Schools (Boston or BPS) and received in-district special education services pursuant to an IEP issued by Boston.

On or about January 17, 2019, the Department of Children and Families (DCF) acquired custody of Student and placed her in a group home located in Winchendon, MA. On or about January 25, 2019, DCF determined that it was in Student's best interests to enroll in Winchendon Public Schools (Winchendon or WPS).¹ Shortly thereafter, the Department of Elementary and Secondary Education (DESE) affirmed that Winchendon was programmatically responsible for Student's educational services and Boston would remain fiscally responsible pursuant to 603 CMR 28.10(5)(b).

¹ Pursuant to the Every Child Succeeds Act (ESSA), P.L. 114-95 (2015), states must provide procedures for ensuring the educational stability of children in foster care. Accordingly, DESE and DCF have promulgated a joint "*Guidance for Schools and Districts on Implementing Foster Care Provisions of the Every Student Succeeds Act (ESSA) (1/26/18)*". This *Guidance* provides that for every child in DCF foster care, DCF, in collaboration with school districts and other interested parties, must determine whether it is in the child's best interests to remain in his/her school district of origin or to enroll in the district where the foster home is located. DCF is responsible for enrolling the child in the chosen district immediately after making the "best interests" determination. *Id.*

The parties dispute when Student actually was enrolled in Winchendon. Student alleges that she was enrolled in January 2019, while Winchendon asserts that it lacked even minimal paperwork required for enrollment until the following March.

In mid-March, 2019, Winchendon issued, and Student's educational decision maker accepted, an IEP calling for a partial inclusion middle school placement. On April 30, 2019, Winchendon amended this IEP to add 1:1 paraprofessional support. This amendment also was accepted. On May 21, 2019, Winchendon proposed an out-of-district placement, as well as tutoring for Student until such placement could be located. Student's decision maker accepted the proposed out of district placement and interim tutoring services, and Winchendon began sending referral packets to public and private day schools. Student received some tutoring during June 2019.

While there is no dispute that Student was out of school for most of the period from January through June 2019, it appears that Student actually attended middle school in Winchendon for approximately two weeks in or about May 2019 and received tutoring from Winchendon beginning in June 2019 and terminating at the end of the 2018-2019 school year. At this time, it is unclear from the parties' submissions whether and when Student received tutoring or other educational services between January and May 2019.

Winchendon resumed sending referral packets to out-of-district day programs at the beginning of the 2019-2020 school year. Although the accepted IEP called for tutoring services during the referral process, Winchendon was unable to locate a tutor, and the parties do not dispute that Student received no such services between September and November 2019. In November 2019, Student began an extended evaluation in a collaborative. This evaluation is still underway.

On November 7, 2019, Student filed a hearing request in which she sought an order for compensatory services from Winchendon for periods during which she was not receiving educational services. On December 6, 2019, Winchendon filed the above-entitled *Motion* seeking joinder of Boston as a party in this matter on the grounds that Boston is financially responsible for Student during the periods for which Student is seeking compensatory services from Winchendon. On December 16, 2019, Boston filed its *Opposition* stating that pursuant to the best interests determination and DESE clarification of LEA responsibility, referred to above, BPS would continue to be financially responsible for Student's educational programming, regardless of whether or not it is party in this matter. Boston further asserts that Student has not alleged any failure by Boston to provide Student with a FAPE during periods when BPS was programmatically responsible for Student. Boston maintains that for these reasons, joinder is unnecessary.²

² Student takes no position on the issue of joinder.

DISCUSSION

Rule I.J of the *Massachusetts Hearing Rules for Special Education Appeals (BSEA Hearing Rules)* allows a BSEA hearing officer to join a person or entity as a party:

...where complete relief cannot be granted among those who are already parties, or the person being joined has an interest relating to the subject matter of the case [such that]...the case cannot be disposed of in their absence. Factors in determining whether joinder is appropriate are: the risks of prejudice to the present parties; the range of alternatives for fashioning relief; the inadequacy of a judgement entered in the proposed party's absence and the existence of an alternative forum to resolve the issues. *Id.*

In the instant case, the criteria for joinder have been met. In light of its financial responsibility for Student's educational services, Boston "has an interest relating to the subject matter of the case," which "cannot be disposed of in their absence." If Student prevails in her claims for compensatory services against Winchendon, there is no dispute that Boston would be financially responsible for such services. If Boston is not a party in this matter, however, the BSEA cannot bind Boston to comply with any order that it might issue for such services. Such a situation potentially would be prejudicial to Winchendon. There also is a risk of prejudice to Boston, which could find itself obligated to fund compensatory services without having had an opportunity to dispute either liability or amount of services owed. Finally, joining Boston early in this proceeding will increase the efficiency of the BSEA's dispute resolution process, especially given Boston's ongoing fiscal responsibility.

ORDER

Winchendon's *Motion to Join Boston Public Schools* in this matter is GRANTED.

By the Hearing Officer,

Sara Berman
January 13, 2020

