

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

**In Re:** Student v.  
Northampton Public Schools

**BSEA # 2006485**

**RULING ON NORTHAMPTON PUBLIC SCHOOLS' MOTION TO JOIN THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES AND  
THE DEPARTMENT OF MENTAL HEALTH**

On January 17, 2020, Parents requested, and were granted, an Accelerated Hearing in the above-referenced matter.

On January 28, 2020, Northampton Public Schools (Northampton) filed a Motion to Join the Department of Mental Health (DMH) and a Motion to Join the Department of Developmental Services (DDS).

On February 4, 2020, DDS filed an Opposition to Northampton's Motion. On February 5, 2020, DMH filed a notice of limited appearance and thereafter, on February 18, 2020, an Opposition to Northampton's Motion to Join DMH. DMH also requested an opportunity to be heard at a Motion Session, which request was Granted and the Motion Session was scheduled for February 19, 2020.

Thereafter, DMH requested a postponement of the date for the Oral Motion Session, to which Parent objected on February 13, 2020, and the Oral Motion Session remained scheduled for the initial date. An Oral Motion Session was held on February 19, 2020.

On March 11, 2020, DMH informed the BSEA that the period for Parent to appeal DMH's determination to deny eligibility had lapsed without Parent filing an appeal, rendering DMH's determination final: Student was not authorized to receive services from said agency.

This Ruling is being issued in consideration of the submissions made by the Parties, the oral arguments and the applicable laws and regulations.

**Facts:**

Student is a twenty year-old resident of Northampton. She has a history of brain injury, developmental delays and autism. Since on or about April 2019, she also presents with depression, suicidal symptoms, anxiety, panic attacks, self-harming behaviors, aggressive behaviors (mainly toward her mother), and cutting behavior.

During the period from June 29, 2019 to September 9, 2019, Student has had several hospitalizations due to suicidal ideation with plan. Between September 12 and October 3, 2019, DDS funded a short term residential stabilization /respite placement, and services were offered by Behavioral Health Network (BHN). During this time Student was receiving ECT therapy, which necessitates close observation not achievable at home. According to DDS, this type of placement is neither a permanent residential program nor a crisis stabilization placement. Thereafter, Student entered the Holyoke Medical Center Psychiatric Unit from where she was discharged back to BHN on October 30, 2019. Her second stay at BHN lasted until November 20, 2019, when she returned to Holyoke Medical Center Psychiatric Unit due to a serious suicide attempt. Upon discharge from Holyoke Medical Center on December 4, 2019, DDS continued to offer Family Supports at it had done since 2016.

At the time this Hearing was requested, Student was hospitalized at the Brattleboro Retreat (Brattleboro) in Vermont. Given her improvement, Student's treating staff at Brattleboro recommended that Student be discharged to a specific setting. Parent requests that this be a full-year residential placement at a therapeutic school such as Dr. Franklin Perkins School in Lancaster, Massachusetts.

Student's IEP calls for her continued placement at the Prospect Meadow Farm. This IEP had been accepted by Parent/Student on July 6, 2019. (In the late summer of 2019, Prospect Meadow Farm developed a Safety Plan for Student inclusive of protocols for supervision and two to one staffing at all times.)

In January of 2020, following Student's mental health deterioration, Parent/Student sought funding for residential placement of Student as noted above, and Northampton denied this request, noting that if Student required such a placement it was not for educational reasons.

### **Position of the Parties:**

#### **A. Northampton:**

Northampton seeks joinder of DDS and DMH in conjunction with Parent's request for residential placement, arguing that Student does not need residential placement for educational reasons.

Northampton further assert that it seeks joinder of DDS in the event that the BSEA finds that Student does not require residential placement, but rather, services and supports from agencies required for non-educational reasons.

Regarding DDS, Northampton asserts that the agency has offered Parent in-home support and services which Parent declined, and also offered Student residential options for non-educational purposes (specifically a program in Tewksbury), which Parent also declined.

In its Motion Northampton concedes that if residential placement is ordered for educational reasons, Northampton alone is responsible. Northampton further concedes that if residential

placement is required for non-educational reason, DDS' regulations prevent the BSEA from ordering that agency to fund the residential placement. However, if Student is found not to require residential placement for educational reasons, and instead some form of day placement with additional supports (including home supports) is required, DDS would be the responsible provider of those additional services. As such, Northampton reasons that there would be a risk of prejudice to Student if DDS is not joined. According to Northampton, without DDS's joinder the BSEA cannot ensure that Student's educational and non-educational needs are effectively addressed.

In sum, Northampton asserts that to the extent that Student may require additional services and supports, they are required for non-educational reasons and could be the responsibility of DDS. Only by joining DDS will the BSEA have authority to order that agency to provide those services.

## **B. DDS:**

Student was found eligible to receive DDS Child Services and Support on March 24, 2016, on the basis of an Intellectual Disability. She would then become eligible for Adult Community Developmental Disability Supports on or after May 2021, when she turns twenty two years old.

DDS states that pursuant to 115 CMR 2.01, Child Supports includes family support services for children residing "in their family home or enhanced or specialized family supports which are available upon referral and assessment by DDS."

Since March of 2016, Student has received service coordination from DDS by a DDS Human Rights Coordinator, and since April of 2016 family support services as well. Family support services "is an allocation of flexible funding primarily in the form of stipends." The aforementioned stipend may be used to purchase supports, services and goods, which include, among others: individual goods and services, family training, respite care, adaptive aids, behavioral consultation and therapy. Family support services are dependent on availability of funds and individual family needs. According to DDS, neither Student nor Parent has requested any additional services or supports through DDS.

DDS concedes that it made a referral to Tewksbury Hospital to ascertain Student's candidacy for placement in their stabilization program, but solely for stabilization purposes. DDS, however, asserts that it does not fund or provide residential placements to school-aged children per their regulations. See 115 CMR 6.07 (2)(c).

DDS reasons that if residential placement is needed for educational reasons, Northampton would be solely responsible. If Student's need for residential placement were for non-educational reasons, the BSEA would be prohibited from ordering DDS to fund such placement since this would be inconsistent with DDS' regulations.

Moreover, DDS argues that its services are voluntary and that it is already providing Student the services and supports available and requested by Student/Parent. DDS states that it cannot offer more services or supports without Student/Parent authorization. No additional services have been identified for DDS to offer.

DDS concedes that the BSEA may order joinder of agencies, but only if a party can demonstrate that there is a dispute regarding provision of services by the agency that are necessary to ensure that the student will be able to access or benefit from the special education program and services offered by the school district. Eligibility to receive services from an agency is insufficient for joinder.

Lastly, if information regarding the services provided to Student by DDS is necessary to build a record, this may be done by calling the DDS representatives as witnesses. Thus, DDS states that it is not a necessary party as complete relief (residential placement) may be ordered in its absence, and requests that it not be joined as a party.

### **C. DMH:**

In its Opposition to Joinder, DMH states that on or about December 2019, an application for DMH services was completed on Student's behalf. DMH asserted that consistent with DMH regulations and using the DMH authorization process, Student was denied authorization to receive DMH services on the basis that her "primary functional impairment appears to be due to Neurocognitive Disorder an Autism Spectrum Disorder".

In light of Student's lack of eligibility to receive DMH services, DMH argues that the BSEA lacks jurisdiction under M.G.L. c.71B §3 to order DMH to offer services rendering joinder of DMH unnecessary. Moreover, the highly restrictive relief sought by Parents, a full calendar year residential placement, is in most cases inconsistent with DMH policy.

On March 11, 2020 DMH notified the BSEA that the deadline for Parents to appeal DMH's determination had lapsed and the family had not filed an appeal.

Since Student had not been authorized to receive DMH services, and since the period for appealing the initial determination had lapsed, DMH asserted that it was not an interested party in the instant proceeding and that the matter could be adjudicated amongst the existing parties.

### **D. Parent's/Student's:**

During the Motion Session on February 19, 2020, Parent's attorney asserted that Student was a complex individual with increasingly more intense mental health issues. She noted that she had nothing to add to the arguments, and she requested that until Parent made a

determination as to whether to appeal an unfavorable DMH determination, consideration of a denial of joinder of DMH should be without prejudice.<sup>1</sup>

**Legal Standard:**

Rule 1(J). of the *Hearing Rules for Special Education Appeals* (Hearing Rules) allows a Hearing Officer to join a party upon written request, in cases 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 and is so situated that the case cannot be disposed of in their absence.” This Rule lists the following factors to be considered in determining whether a person or entity should be joined: “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 judgement entered in the proposed party’s absence; and the existence of an alternative forum to resolve the issues.” *Hearing Rules*, Rule 1(J).

In the instant case, in order to determine whether these criteria are met, the Hearing Officer must consider state special education regulations governing the BSEA’s jurisdiction over state agencies pursuant to 603 CMR 28.08(3), which grants the BSEA jurisdictional authority to enter determinations regarding a state human service agency’s responsibility to provide “services” in accordance with its rules, regulations and policies, in addition to the program provided by the school district. See *Lowell Public Schools*, 107 LRP 655543 (2007).

Both DDS and DMH are state agencies falling squarely within the grant of authority conferred to the BSEA under the aforementioned regulations. Therefore, my analysis turns on whether DDS and/ or DMH must be joined as necessary parties in the instant case.

**Conclusion:**

The question of whether DMH and/or DDS should be joined as necessary parties in this matter calls for the joinder analysis to be made separately. In order to join either agency, participation of the agency must either be necessary to granting complete relief, or because either agency has an interest in the subject matter of the case such that there may be no disposition of the matter in its absence.

If Student is found to require residential placement for educational reasons it is clear that Northampton alone would be responsible for said placement. However, this early in the process it would be premature to consider this possibility alone. Therefore, the question turns to consideration of the possibility that Student may not need residential placement for educational reasons (or residential placement at all), and whether in order for Student to access FAPE, DDS and/or DMH may be required to provide services within their purview, to support her educational placement. At this point in the process, lacking the information necessary to reach a determination as to the type of placement needed by Student, I must

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<sup>1</sup> Parent’s decision not to appeal DMH’s determination renders this request moot.

consider whether DDS and or DMH should be joined in order not to prejudice the existing parties and to achieve administrative economy.

The evidence is convincing that DMH may not be joined as a Party. Student has not been found eligible to receive DMH services because of a non-qualifying diagnosis, and absent Parent's timely appeal of this finding, the aforementioned agency's determination is now final. Given this situation, the BSEA lacks authority to order DMH to offer any services to Student. Similarly, the BSEA cannot order DMH to fund a residential placement for Student. As such, Northampton's Motion to join DMH is **DENIED WITH PREJUDICE**.

I next turn to the question of whether DDS must be joined.

Student was found eligible to receive DDS services in 2016 and she has received services from this agency through the present time. I note that DDS has offered more services than have been accepted by Parent thus far.

Northampton is persuasive that this early in the process, it would be premature to disregard the possibility that Student may not need residential placement, that she may require a residential placement for non-educational reasons, or that she may require a day placement with additional supports, including home supports (such as placement at Prospect Meadow Farms in conjunction with additional supports, within the array of supports that can be provided by DDS and which DDS is uniquely situated to offer). If this were the outcome of the Hearing on the merits, Northampton persuasively argues that without joinder of DDS the BSEA cannot ensure that Student's educational and non-educational needs are appropriately addressed and Student would be prejudiced. Absent DDS' joinder complete relief cannot be granted in the instant case. Administrative economy also supports joinder of DDS so that a range of viable alternatives and relief are available and can be fashioned to assure Student's access to FAPE in a thoughtful and well-coordinated manner. As such, I find that DDS is a necessary Party to this proceeding and must therefore, be joined. Northampton's Motion to Join DDS is **GRANTED**.

**ORDER:**

1. Northampton's Motion to Join DMH is hereby **DENIED WITH PREJUDICE**.
2. Northampton's Motion to Join DDS is hereby **GRANTED**. As such, DDS is joined as a necessary party to this proceeding.

So Ordered by the Hearing Officer,

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Rosa I. Figueroa  
Dated: March 30, 2020