

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

**In re:** Victor C. v.  
Boston Public Schools

BSEA #1503625

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

On January 12, 2015, Boston Public Schools (Boston) filed a Motion to Join the Department of Mental Health (DMH). Relying on Rule 1(J) of the *Hearing Rules for Special Education Appeals* (addressing joinder of necessary parties) and 603 C.M.R. 28.08(3) (granting the BSEA jurisdiction to resolve special education disputes involving provision of services by state agencies in accordance with the rules regulations and policies of said agencies<sup>1</sup>), Boston argued that Student has a history of mental health issues, that Parent seeks residential placement of Student and that "DMH may be found to have responsibility to provide necessary services in addition to what is determined to be Boston's responsibility". Boston states that through a settlement agreement reached between the Parties in April 2014, Boston is responsible to offer Student placement at a therapeutic day program. The Parties had further agreed that said program be F.L. Chamberlain International School. Student was thereafter arrested in May 2014 and according to Boston, has remained in pre-trial detention units since that time.

Boston stated that the professionals that evaluated Student found him to be in need of intense psychological, behavioral and cognitive treatment and that his needs would best be met in a residential placement. Other professionals have raised concern about his mental state and the possibility that he may harm himself especially in light of hospitalization on August 3, 2014. The Arbour Hospital notes reported Student's mental state to include "irritability, euphoria and lability and his thought process was disorganized. His reality testing was impaired". Student's Arbour Hospital Discharge Diagnosis included: ADHD-Inattentive Type; Psychotic Disorder, N.O.S; Conduct Disorder- Childhood onset type. He was found not to possess the ability relevant to competence to stand trial. Lastly, a recent neuropsychological evaluation found that Student's "behavior symptoms may be better managed with medication in an environment that can provide 24 hour, seven day per week management and monitoring."

According to Boston, then, the reasons for Student's residential placement needs involve medication, treatment of mental health symptoms and emotional stabilization, none of which is related to education. Lastly, Boston argued that DMH's absence would seriously restrict the "range of alternatives for fashioning relief" as required by Rule 1J of the *Hearing Rules*

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<sup>11</sup> See also 2000 Mass. Acts ch. 159, §162.

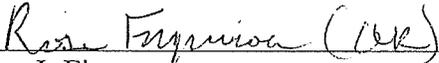
for *Special Education Appeals* and may further hinder settlement negotiations between the Parties.

Pursuant to Rule VII C of the *Hearing Rules of Special Education Appeals*, any party that seeks to object to the allowance of a Motion may do so by filing a written objection within seven calendar days of the date of receipt of the Motion. DMH filed an Opposition to the joinder motion on January 20, 2015. In it, DMH argued that it is not a necessary party because: 1) Student has not yet been authorized for DMH services (his application is still being processed at DMH)<sup>2</sup> and he has not received services in the past, and 2) because there has been no determination regarding what services Student would require in order to receive a free appropriate public education (FAPE). DMH states that Boston's Motion is therefore premature. Moreover, according to DMH, Boston has not demonstrated that Student has a need for additional services to those the school would be responsible to offer. DMH argued that the case can be resolved without its participation.

I note that Boston does not dispute its responsibility for the day portion of Student's placement and attendant transportation. Rather, it disputes its responsibility for the residential portion and further asserts that said component is not for educational reasons.

Upon review of the arguments made by the Parties, the relevant facts and case law, I agree that joinder of DMH at this juncture is premature. DMH's knowledge and information regarding Student may be shared through witness testimony and documentary evidence. However, it is possible that DMH will find Student eligible to receive services, a determination which may alter its relationship and responsibilities to Student. It is also possible that while Student may need residential placement, such need is not for educational reasons. As such, while DMH is correct that its joinder is premature, I will allow bifurcation of this matter so as to ascertain Boston's educational responsibility toward Student first, and in the event that Boston is not found to be responsible for the residential portion of Student's placement, either Boston or Parent may renew the request to join DMH or any other party necessary to the determination of responsibility for the residential portion of Student's placement. As such, Boston's Motion to join DMH is DENIED WITHOUT PREJUDICE.

So Ordered by the Hearing Officer,

  
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Rosa I. Figueroa

Dated: January 29, 2015

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<sup>2</sup> Following an interview with Parent, the eligibility specialist met with Student on December 23, 2014, finding that Student presents a "complex constellation of disabilities including multiple diagnoses, a trauma history, a question of pervasive developmental disorder and learning disabilities." A DMH psychiatrist is in the process of evaluating the record but at present has not yet made a finding that Student meets the clinical criteria to receive DMH services.