This matter comes before the Hearing Officer on the Motion of the Attleboro Public Schools (hereinafter “School”) to join the Department of Mental Health (hereinafter “DMH”) in this special education appeal. The Student assented to the Motion to Join. The DMH opposed joiner. All interested entities submitted written arguments by April 11, 2003. No oral arguments were heard.

Factual Background

The facts essential to the resolution of this Motion are not in dispute:

1) Dylan is a twelve year old Student diagnosed with ADHD, bipolar disorder, psychotic disorders, post-traumatic stress disorder, and petit mal seizure disorder. He has received special education services through Attleboro since moving into the town in 1998. He began attending the EAP program at the BICO Collaborative in the summer of 1999. He had three hospitalizations and a long term out of home placement between July 1999, and April 2002. Each time he either returned to the BICO Collaborative or attended BICO while living apart from his family.

2) Dylan was found eligible for children’s services from the DMH in July 1999. DMH has provided services to Dylan, including residential placement, since that time.

3) At a Team meeting held on June 7, 2002, an IEP calling for Dylan’s continued placement at the BICO Collaborative was developed. The Parent accepted the IEP on June 18, 2002.

4) On June 28, 2002 Dylan was hospitalized after leaping out of a moving car. Since then he has remained at the Wetzell Center, a secure, staff intensive clinical treatment hospital diversion program. He receives some

* “Dylan” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in publicly available documents.
educational services at the Wetzell Center. Dylan is currently clinically ready for another setting.

5) On March 18, 2003, the Parent requested a hearing seeking a residential educational program for Dylan. The School asserts that its proposed placement at the BICO Collaborative is the least restrictive appropriate educational program for him and that he should attend the program regardless of the residential option chosen for him by his parent and DMH. The DMH argues that the School is responsible for funding the educational portion of any appropriate residential program in which Dylan is enrolled.

Conclusions

It is by now well established that the Bureau of Special Education Appeals has the authority to join a human service agency such as DMH involuntarily to a special education appeal when the agency’s participation is necessary to assure the provision of a free, appropriate public education to the Student. M.G.L. c. 71B § 3 as amended by chapter 159 § 162 of the Acts of 2000 (“section 162”); 603 CMR 28.08 (3) and BSEA Hearing Rule 1F. In this matter, however, I conclude that DMH need not be joined at this juncture in order to afford the Student complete relief on his special education claim.

Unlike the facts presented in In Re: Callie, another joinder dispute I decided just last week, the Student here is actively seeking school funding for a residential special education program, has identified at least two arguably appropriate and available placements, and is prepared to show at a hearing that no less restrictive educational options are appropriate for Dylan. The School, on the other hand, insists that its day collaborative program can meet all of Dylan’s special education needs, and that a residential placement would be made for other than educational reasons. These arguments frame a type of dispute the BSEA has been hearing and deciding since well before the relatively recent joinder amendments, that is: whether a student requires a twenty-four hour placement for educational reasons? This question may be answered by looking closely at Dylan’s current educational functioning along with the expert recommendations of his teachers, treatment team and care givers, and matching them to the services and environment offered by the School. The participation of DMH, while potentially helpful, is not necessary to this portion of the Hearing Officer’s evaluation. It is quite possible that the relief requested by the Parent, a residential special education program, could be obtained entirely without reference to DMH. That conclusion is reached more easily when it is known that DMH has provided residential services to Dylan in the past and stands ready to continue to provide residential services to Dylan in the future. Should it be determined, after a hearing, that Dylan needs a residential educational program, the responsibility for providing twenty-four hour services shifts to the School. On the other hand, should the day program offered by the School be found appropriate to meet all of Dylan’s educational needs, the role DMH plays in
service provision to this Student will be significantly greater. Just how great remains to be determined. As it appears that complete relief on Parent’s claim can be ordered regardless of any current or potential DMH services, the participation of DMH in this special education appeal is not necessary. Therefore I find that involuntary joinder is not warranted in this matter. BSEA Rule 1F.

Order

For the reasons discussed above the School’s Motion to Join the Department of Mental Health is DENIED.

By the Hearing Officer,

____________________________  Lindsay Byrne, Hearing Officer

Date: _____________________  