

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

**In Re: Student & Quabbin Regional School District
& Department of Mental Health
& Department of Developmental Disabilities**

BSEA #2211285

**RULING ON QUABBIN REGIONAL SCHOOL DISTRICT’S MOTION FOR
JOINDER OF THE MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH
AND THE MASSACHUSETTS DEPARTMENT OF DEVELOPMENTAL
DISABILITIES**

This matter comes before the Hearing Officer on the Quabbin Regional School District’s (District) *Motion for Joinder of the Massachusetts Department of Mental Health and the Massachusetts Department of Developmental Disabilities (Motion)*, filed with the BSEA on June 15, 2022. The District seeks joinder of the Massachusetts Department of Mental Health (DMH) and the Massachusetts Department of Developmental Disabilities (DDS) as necessary parties, in accordance with Rule I(J) of the *Hearing Rules for Special Education Appeals (Hearing Rules)*, claiming complete relief cannot be granted in their absence. Specifically, the District submits that to the extent Student requires a residential setting, rather than the private day placement it has proposed, he does not require it for educational purposes. As such, DMH and DDS, agencies Student currently is eligible for, and receiving services from, must be joined as necessary parties.

No party or potential party has requested a hearing on the *Motion*. Because neither testimony nor oral argument would advance the Hearing Officer’s understanding of the issues involved, this Ruling is issued without a hearing, pursuant to Hearing Rule VII(D).

For the reasons articulated below, the District’s *Motion* is **ALLOWED** and DMH and DDS are joined as necessary parties in this matter.

RELEVANT PROCEDURAL HISTORY AND POSITIONS OF THE PARTIES

On June 1, 2022, Parent filed a *Hearing Request Form (Hearing Request)* advising that Student, who will be 19 in late July, 2022 and for whom his mother serves as his Temporary Guardian¹, “... requires a residential placement to maintain his progress towards his educational and vocational goals.” Parent challenges the proposed IEP calling for Student to be placed educationally in a private day program, and specifically requests an Order

¹ Student’s adoptive Mother (Parent) is appointed as Student’s Guardian pursuant to an Order Appointing Temporary Guardian For An Incapacitated Person dated August 18, 2021. This Order was further extended on October 5, 2021, December 28, 2021 and March 22, 2022 through September 6, 2022, issued by the Worcester County Probate and Family Court.

requiring the District to “... expend public funds for a residential educational placement².” A *Notice of Hearing* was issued in this matter on June 2, 2022. An initial Hearing date was set for July 6, 2022.

On June 13, 2022 the District filed its *Response to the Hearing Request* (Response), disputing Student’s need for a residential placement for educational reasons, arguing that “... should the Student be determined to require some form of supported housing or in-home supports ... those supports are not educational in nature, and are the responsibility of DMH of which he is a current client.” The District also claimed that Student, who is also a client of DDS “... may require additional supports from DDS ...”³.

On June 15, 2022, the District filed the underlying *Motion* asserting the parties will be prejudiced in the absence of DMH and DDS. Although the *Hearing Request* seeks a residential educational placement, the District contends that if, after a hearing in this matter, a residential placement is found to be required for non-educational reasons, appropriate relief cannot be awarded without DMH’s involvement. Similarly, should it be determined after a hearing that a residential placement is not necessary, but in order to access or benefit from the District’s proposed private day placement, additional services beyond the responsibility of the District are needed, appropriate relief cannot be awarded without DMH and DDS’s involvement.

With regards to DMH, the District argues that given Student’s current eligibility and receipt of DMH services and “... DMH’s stated ongoing involvement in assisting the Student to develop healthy boundaries with his parents so that he may return home”, complete relief cannot be granted in this matter without DMH’s involvement as a party⁴. The District also submits that DMH recommended and funds Student’s current Intensive Residential Treatment Program (IRTP) placement at the Merrimack Center (discussed further below), and currently provides both therapeutic and case management services to Student. As such, according to the District, DMH “has an interest relating to the subject matter of this case, and [] is so situated that this case cannot be disposed of in its absence.” Finally, the District contends that based upon DMH’s rules, regulations and policies, the BSEA could craft an order requiring DMH to provide certain services or supports to Student in the form of “additional in-home or community supports that are beyond the responsibility of the District, a residential placement for non-educational reasons, such as a group home, or a cost-share of a residential educational placement.”

² Parent also alleges several procedural and substantive violations of the IDEA and Massachusetts special education laws, which are not relevant to this joinder *Motion*, and Parent requests a finding that the District failed to provide Student with a FAPE as well as an Order for compensatory services to Student as a result of this denial of a FAPE for the past two years.

³ The District also denied all procedural and substantive violation claims and the claim for compensatory services. The District alleged certain claims were barred based upon the statute of limitations and Parents’ full acceptance of the Student’s 2020-2021 IEP, which arguments are also not relevant to the instant *Motion*.

⁴ See *Hearing Rules* I(J).

With regards to DDS, the District argues that given Student’s current eligibility and receipt of DDS services, in light of his “co-existing diagnosis of Mild Intellectual Disability”, and his current placement in the only IRTP that supports persons with both mental health and intellectual disability diagnoses, DDS is also a necessary party to these proceedings and this case cannot be disposed of in its absence. The District submits that DDS has acknowledged Student may be eligible for services associated with its Community Residential Education Program (CERP), consisting of a partnership between DDS and the Department of Elementary and Secondary Education (DESE), as well as Intensive Flexible Family Supports (IFFS). Citing 115 CMR 6.07(2), the District also argues that DDS’s rules, regulations and policies requiring consideration of supports a person under 22 receives from an eligible agency, “... [are] relevant only to an assessment of the individual’s priority for DDS supports, and does not preclude DDS from providing supports.”

On June 21, 2022 the parties participated in a Conference Call and agreed, among other things, that DMH would file its opposition to the *Motion* by June 23, 2022 and DDS would file its opposition by June 29, 2022⁵. Thereafter, on June 21, 2022 Parent submitted a letter advising she assents to the *Motion* as to joinder of DMH but opposes joinder of DDS.

In its *Memorandum in Opposition to Motion to Join Department of Mental Health (DMH Opposition)*, DMH argues it is not a necessary party to these proceedings, and that its policies⁶ prohibit the BSEA from issuing any Orders for any of the relief suggested by the District⁷. According to DMH “it is not within the mandate and expertise of DMH to provide special education services and accompanying related services to DMH clients”, rather this is the responsibility of the local public school district. DMH also contends any need for residential services for Student is for educational, not mental health, reasons. DMH further advises that it has been providing and will continue to provide, services to Student and his family inclusive of his current services, regardless of the outcome of the matter, “... including working toward and supporting a return home when clinically indicated.” As a result, DMH submits that the matter can be disposed of in its absence and complete relief can be granted among the existing parties. Finally, DMH argues that no party will be prejudiced if DMH is not joined as no additional services from or through DMH are being sought or are needed for Student, and if Parents are not satisfied with DMH services, there are mechanisms within DMH’s own regulations to appeal this in an alternative forum.

Similarly, in its *Memorandum of the Department of Developmental Services in Opposition to ‘Quabbin Regional School District’s Motion to Join the Massachusetts Department of*

⁵ The parties also discussed postponing the Hearing to August 22, 23 and 24, 2022. The oppositions were received on the agreed-upon dates. The Hearing was also postponed, for good cause, in part due to an updated treatment and postponed discharge date for Student (as DMH has obtained a waiver to extend Student’s stay at the IRTP for 3 months), in accordance with my June 29, 2022 *Ruling* issued on behalf of then-Hearing Officer Sara Berman (I note this matter was subsequently administratively re-assigned to me as the underlying Hearing Officer on July 12, 2022).

⁶ Specifically, DMH CYF (Child, Youth and Families) Residential Intervention Policy #19-02 of October 30, 2019 (*DMH Policy 19-02*), a copy of which was filed with the *DMH Opposition*.

⁷ See M.G.L. c. 71B § 3.

Developmental Services' (DDS Opposition), DDS argues joinder is unnecessary as complete relief can be granted without DDS's involvement. Moreover, DDS's own regulations prohibit funding or provision of residential services to school-aged children⁸, and it is already providing the highest level of supports to Student through its Intensive Family Support Services (IFSS)⁹, which are the greatest amount of supports DDS provides to eligible children. By its own regulations, all DDS services are subject to appropriation and thus can only "... be provided voluntarily, after an assessment of need and determination of and (sic) individual's priority to receive services. See 115 CMR 6.07." Further Parents and Student have not requested any additional services from DDS for which Student was assessed and denied. Should this occur, however, DDS regulations provide for an internal appeal process. As such, DDS argues that,

"[e]ligibility for or receipt of services through DDS is not the standard for joinder. Rather [the District] must show that [Student] requires additional services from DDS that are necessary to ensure that he will be able to access or benefit from [the District's] special education program and services."

On July 1, 2022, Parent also filed a *Motion in Opposition for Joinder of DDS* confirming her continued assent to joinder of DMH and her continued opposition to joinder of DDS based on DDS's advocacy against Parent being granted guardianship of Student in the Worcester Probate and Family Court guardianship proceeding¹⁰. Parent argues that DDS is not a necessary party to the dispute as to whether Student requires a residential educational placement, and concurs that DDS regulations prohibit it from providing residential services to Student until he is 22 years of age. Parent further claims she will be prejudiced by DDS's joinder based upon its actions in opposing Parent as Student's guardian, and also its incorrect assertions that Student lacks formal evaluation information and that this deficiency is due to Student having been homeschooled.

FACTS

The facts stated herein are considered to be true solely for purposes of this *Ruling*.

1. Student, who is currently 18 years old, has, since February 1, 2022, been residing at the Merrimack Center at Tewksbury Hospital in Tewksbury, MA, an IRTP supporting youth 18 years old and younger who have both mental health and intellectual disabilities. Admission to the Merrimack Center is by DMH acceptance only pursuant to the

⁸ Specifically, 115 CMR 6.07(2)(c).

⁹ Although DDS makes this argument, it also states in Paragraph 9 of the "Facts" Section of the *DDS Opposition* that "A referral to IFSS was not made because the family did not identify a need that could have been addressed by IFSS at that time." No date was provided to correspond with this non-referral decision, and it is unclear from the *DDS Opposition* if or when IFSS services began for Student, as is alleged.

¹⁰ Parent fails to provide any further context related to DDS's opposition including failing to advise as to when such opposition was made, or the reasons for the opposition. I take administrative notice of the fact that Parent's guardianship of Student continues to exist at this time, despite DDS's opposition.

provisions of Massachusetts psychiatric hospital admission statute, M.G.L. c. 123 and DMH regulations at 104 CMR 27.00. (*Hearing Request; Response to Hearing Request; DMH Opposition; DDS Opposition; DMH Policy 19-02*).

2. Student was first deemed eligible for special education in January 2020 under a primary disability category of Intellectual (based upon diagnosis of Intellectual Disability) and a secondary disability category of Emotional (based upon diagnoses of Reactive Attachment Disorder, Post-Traumatic Stress Disorder, Generalized Anxiety Disorder and Language Disorder). (*Hearing Request; Response to Hearing Request; DDS Opposition*).
3. Student was born in Bulgaria and was placed, at a young age, in an orphanage in Malak Preslavets, Bulgaria. At the orphanage, Student was subjected to horrific and traumatic acts on a daily basis, inclusive of sexual, physical, psychological and emotional abuse; racial and ethnic discrimination on the basis of his Roma descent; and food withdrawal, forced alcohol consumption and other deprivations of basic needs. (*Hearing Request; DDS Opposition*).
4. Parents adopted student in 2015 when he was 12 years old and brought Student to live with them in their home in Barre, Massachusetts. (*Hearing Request*).
5. Student was exclusively homeschooled from the time of his adoption until some point after the determination of Student's eligibility for special education in January 2020, when Parent agreed to Student having some related services provided remotely, although Student only participated in them occasionally and inconsistently, and he continued to be homeschooled. (*Hearing Request; Response to Hearing Request; DDS Opposition*).
6. Parent accepted Student's December 11, 2020 – December 10, 2021 IEP in full on January 31, 2021, which provided for a substantially separate placement in the District's Project Involve program, however Student continued to be homeschooled for the remainder of the 2020-2021 school year, sporadically accessing some related services only remotely. (*Response to Hearing Request*).
7. Student's emotional struggles resulted in screenings at the local emergency room on five occasions in 2020 and three more occasions during the summer of 2021. Student also began to exhibit inappropriate sexualized behaviors during this time, which Parents discussed during a May 28, 2021 Team meeting. (*Hearing Request*).
8. At some point between August and September 2021, Student was hospitalized and admitted to the UMASS Psychiatric Treatment and Recovery Center (PTRC) as a result of a Section 12 petition involving allegations of physical and sexual assaults on Parents and other individuals in the home as well as suicidal and homicidal ideation, among other issues. Student transferred from the PTRC to the Merrimack Center IRTP on February 1, 2022, where he remains at this time. (*Hearing Request; Response to Hearing Request; DDS Opposition*).

9. At the Merrimack Center, Student has had several instances involving physical aggression requiring restraint, has shown “unhealthy fixations” including towards female peers in the program, “expresses to clinical staff that he has ‘command hallucinations’ that tell him to hurt people”, and has demonstrated “impaired social skills and poor conflict resolution”. (*Hearing Request*).
10. Student has been eligible for and receiving DMH services since February 2020. In addition to funding and supporting Student at his current IRTP placement, DMH also provided home-based clinical services remotely during the COVID-19 pandemic. (*DMH Opposition; DDS Opposition*).
11. Student has been eligible for and receiving DDS Child Services and Supports (CSS) and Children’s Service Coordination from DDS since February 27, 2020. As defined in 115 CMR 2.01, CSS consists of family support services provided to individuals younger than 22 years old who reside in their family home or enhanced or specialized family supports which are available upon referral and assessment by DDS. According to DDS, Intensive Family Support Services (IFFS), in turn, consist of,

“... the allocation of flexible funding, primarily in the form of stipends. It is available for intermittent purchase of allowable supports, goods and services, including but not limited to respite, family training, individual goods and services, adaptive aids, therapy and behavioral consultation. The allocation is based on the family need, and the availability of funding resources.”

Specifically, DDS has provided flexible funding for a special education advocate for Student since March 2021. Respite services during the COVID-19 pandemic were also offered but were not provided as the family was unable to identify a safe respite for Student, but ABA supports were not provided as Student is not diagnosed with Autism¹¹. (*DDS Opposition*).

12. Student’s current proposed IEP, dated May 24, 2022 – May 23, 2023, calls for placement in a private day program. Although Parents assert that a day placement would be insufficient to provide Student with a FAPE, the District has sent referrals for three out-of-district day placements with Parent consent. (*Response to Hearing Request*).
13. According to DMH, Student is ready for discharge to a less restrictive setting¹²; however, at the most recent Team meeting DMH advised it is not recommending discharge to home at this time. (*DMH Opposition; Response to the Hearing Request*)

¹¹ Additionally, as noted above, DDS has provided unclear information as to the status of an IFFS referral.

¹² As Student will be 19 in late July, 2022, it is not entirely clear if his readiness for discharge is for clinical or age-related reasons, as, according to both the Parent and District, Student faces mandatory discharge upon turning 19 (which discharge is now extended for 3 months as a result of the waiver DMH obtained, noted above). (*Hearing Request; Response to Hearing Request*).

LEGAL STANDARD

Rule I(J) of the *Hearing Rules* states that,

“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 judgement entered in the proposed party’s absence; and the existence of an alternative forum to resolve the dispute.”

To properly analyze a joinder request, I must also consider the state and federal laws that establish the limited jurisdictional authority of the BSEA. Specifically, 20 USC §1415(b)(6), grants parties the right to file timely complaints with the state educational agency designated to hear such “with respect to any matter relating to the identification, evaluation or educational placement of the child, or the provision of a free appropriate public education to such child”. Similarly, M.G.L. c. 71B §2A, establishing the BSEA, authorizes it to resolve special education disputes, “... between and among parents, school districts, private schools *and state agencies* ...”. (Emphasis added). However, M.G.L. c. 71B §3, also provides that,

“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 [developmental services], the department of mental health, ... or any other state agency or program, in addition to the program and related services to be provided by the school committee¹³.” (Emphasis added).

Thus, in the instant matter, I cannot order joinder of either agency, unless I find, first, as to each of them individually, that complete relief cannot be granted among the existing parties and thus the case cannot be disposed of in its absence, after consideration of the risk of prejudice to the present parties in allowing such joinder, the alternatives available to issue a judgement without joinder, and the existence of an alternative forum to resolve any disputes.

If, after such consideration, I believe joinder is appropriate, I am only then able to join the requested state agencies if I also find that any relief I could order of the joined parties would not be prohibited by the agency’s rules, regulations or policies. In other words, for joinder to be allowed, the District “... must be able to show, at least in a preliminary way, that it will be

¹³ See 20 USC §1412(a)(12).

able to present evidence at a Hearing that may result in the entity being found responsible to offer some service ... to the student¹⁴.”

A close review of the rules, regulations or policies of DMH and DDS is, therefore, in order. DMH’s rules are set forth in *DMH Policy 19-02* whose purpose is to “provide guidance and clarification” as to how DMH will implement its service authorization regulations¹⁵ regarding residential intervention for youth. It provides, in relevant part, that

“... DMH services are not an entitlement. DMH is a payer of last resort; provision of DMH services is contingent upon a determination that the youth’s service needs cannot be met by other sources, providers or funders.

DMH service authorization is guided by the principle of providing services at the most appropriate level of care in the least restrictive environment in order to enable the youth served to live in their community of choice.

Residential intervention is viewed as a last resort and is used only when a DMH service-authorized youth cannot safely manage in the youth’s home environment as a result of behaviors related to the youth’s serious emotional disturbance (SED) or serious mental illness (SMH). Residential intervention, *like all clinical services*, is intended to be for the shortest period of time necessary to restore the youth to a level of functioning that permits the youth to live in a less restrictive environment.

... Some DMH authorized youth require more intensive clinical or educational services, and are unable to access those services unless they are delivered in highly structured environments providing 24/7 integrated daily care. These settings include: ... Residential school placements *generally* funded as part of the youth’s entitlement to special education and related services.

DMH will not fund residential placements in 24/7 residential schools *when it is determined that the youth needs such a service to make educational progress*, which includes the generalization of skills necessary for safe community living. For DMH service authorized youth who require such placements, *DMH may be involved to provide ancillary services within its service system as clinically indicated, and will assist the youth in transitioning back to a community based setting as soon as possible.*

DMH will fund the residential portion of a 24/7 residential school placement in extraordinary circumstances.... These short-term authorization will be funded only with an emergency exception-based approval, intended to bridge

¹⁴ *In Re: Boston Public School District*, BSEA No. 02-4533 (Figuroa, 2002); see *In Re: Acton-Boxborough Regional School District*, BSEA No. 1703770, 23 MSER 99 (Figuroa, 2017).

¹⁵ 104 CMR 29.00.

the period of time until the LEA funding source is secured or an opening in a less restrictive setting is available¹⁶.” (Emphasis added).

On the other hand, DDS services for children under the age of 22, are, according to DDS’s regulations, “subject to the availability of resources”, and the area director has the exclusive authority to determine priority for all DDS supports¹⁷. DDS youth services “... are intended to assist, not to replace or substitute for, the child’s family”¹⁸. Moreover, in determining the priority to be provided for such services, the “severity of the child’s or young adult’s or family’s needs” must be considered¹⁹. The DDS regulations also require deference to services which should be, or are being provided, to children under the age of 22 by other agencies or school districts²⁰. With regards to residential services, specifically, DDS “shall not” provide these services if the student is eligible for or receiving the residential services from his or her school district “or any other public agency”²¹. The failure to apply for or the voluntary refusal of residential services that the student would be entitled to is insufficient to place the responsibility for residential services with DDS²².

With these statutory and procedural requirements, as well as the applicable agency rules, regulations and policies in mind, I turn to consider the District’s *Motion*.

APPLICATION OF LEGAL STANDARD

Here, the District is requesting joinder of two state agencies, in a matter concerning a dispute over whether Student requires a private day program to receive a FAPE, as it has proposed, or, if a residential program is needed, whether such need is for educational or non-educational reasons. This request, and the underlying dispute fall clearly within the jurisdictional authority of the BSEA²³. Although the parties do not dispute that Student requires, at a minimum, a day program to meet his educational needs, and it appears there is a general consensus that Student is not currently able to return to live at his home with Parents, at this early stage of the proceedings, it is not yet clear what type of a living placement Student does need, or if such a placement is needed for educational reasons, or

¹⁶ The policy also notes it is to be reviewed not less than annually. Presumably this means its current form exists after having been reviewed at least twice since it was adopted on October 30, 2019.

¹⁷ 115 CMR 6.07.

¹⁸ 115 CMR 6.07(2)(a).

¹⁹ 115 CMR 6.07(2)(b).

²⁰ 115 CMR 6.07(2)(c) and 6.07(2)(e).

²¹ 115 CMR 6.07(2)(c).

²² *Id.*

²³ 20 USC §1415(b)(6); M.G.L. c. 71 § 2A; see 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a), providing for the BSEA to hear “... any matter concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law or the procedural protections of state and federal law for students with disabilities.”; see also 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a). Further, *DMH Policy 19-02* does not define what “short-term” is.

otherwise. Further, it is undisputed that Student has been, is currently, and will remain, eligible for both DMH and DDS services and supports.

I analyze the District's joinder request of each agency separately.

JOINDER OF DMH

Both parties agree that as to DMH, they would be prejudiced in the absence of joinder, as joinder of DMH will ensure that the full range of alternatives for fashioning relief is available so that an adequate judgement may be entered. Including DMH as a party would provide options for relief which would not otherwise be available.

DMH argues that the residential placement sought by Parents is for at least an entire academic year²⁴, and such a timeframe is contrary to *DMH Policy 19-02*'s requirement that DMH fund residential intervention on a "short-term basis only". DMH further argues that its expertise and mandate does not involve providing special education and associated related services to students. Thus, it is not a necessary party to the proceedings in this matter and residential educational services can be ordered in DMH's absence.

I agree with DMH that all of Student's special education and related service are the responsibility of the District, not DMH. If Student's educational needs require him to be educated in a residential facility, then I am bound by the federal and state special education laws, as well as the rules, regulations and policies of DMH to order the District to solely support and fund this placement. However, I do not agree that the "short-term basis" requirement in *DMH Policy 19-02* precludes DMH from being responsible for providing any further residential intervention supports to Student upon his discharge from the Merrimack Center IRTP. According to *DMH Policy 19-02*, the short term emphasis applies to "residential intervention like all clinical services" rather than just to residential intervention services. Further, the Policy does not prohibit DMH from providing residential intervention support; rather it speaks of residential intervention as a "last resort", recognizing that residential school placements are "generally" funded by a school district to address special education and related services needs, but that DMH "will fund the residential portion of a 24/7 residential school placement in extraordinary circumstances". Additionally, the Policy provides that for students who are in residential placements for educational reasons, "ancillary services ... as clinically indicated" may be provided by DMH, and DMH also "will" assist in the student's transition back to a community-based setting as soon as possible.

Thus, though DMH cannot be ordered to cost-share a residential placement needed for educational reasons, I do not find that *DMH Policy 19-02* prohibits DMH from having any

²⁴ Although this is Parent's request, it is not necessarily the case that residential placements, if needed, must last an entire academic year. While IEPs are generally reviewed annually, they can be reviewed earlier, or the Team could decide to schedule interim meetings to determine whether a transition to a lesser restrictive setting is warranted. See 34 CFR 300.324(b) requiring the IEP to review and revise as appropriate a child's IEP "periodically *but not less than* annually"; 603 CMR 28.04(3). (Emphasis added).

residential support obligations, including funding, for a DMH service eligible student who requires a residential setting for non-educational reasons. Moreover, even if a residential educational setting is warranted, *DMH Policy 19-02* allows me to order DMH to provide ancillary services, and home transitional supports too, if I find them to be warranted.

It is too early at this stage of the proceedings to know what the evidence will show, after a full hearing on the merits. Although Parent seeks a residential special education placement, the District contends a private day placement is all Student needs for educational reasons. Thus, I will have to consider all potential relief between these two options, including but not limited to a residential placement for non-educational reasons, or a private therapeutic day placement with additional ancillary services or supports to assist Student's transition back into the community from his IRTP placement, all of which DMH could have some responsibility for providing. Moreover, given the facts summarized above, I may also conclude Student's circumstances are "exceptional", thereby necessitating DMH residential interventions. The District has, established, "at least in a preliminary way" that it could present evidence of Student's need for additional services from DMH²⁵.

JOINDER OF DDS

As to DDS, Parent opposes joinder on the basis of alleged prejudice to her and Student due to DDS's opposition to Parent's appointment as Student's guardian in a separate forum, at some unidentified time for unexplained reasons. This opposition by DDS was unsuccessful as Parent currently remains Student's guardian. The prejudice referred to in Rule I(J) of the *Hearing Rules* relates not to a disagreement between a potential party and a present party in a separate legal proceeding, but to the legal prejudice that the current parties' ability to obtain complete relief if the potential party is not included. For this reason, I do not find that Parent's claim of prejudice weighs against joinder of DDS, particularly in light of Student's complicated needs, the District's limited knowledge of his educational functioning and needs, as he has primarily been homeschooled, and his eligibility for and receipt of DDS supports for over two years.

Including DDS as a party in this matter will also provide options for relief which would not otherwise be available in its absence and which are not prohibited by DDS's rules, regulations or policies. DDS argues its presence as a party is unnecessary as it is prohibited by its regulations from funding residential supports for children under 22, as requested by Parent. Further, DDS contends it already provides the greatest amount of support it can under its regulations to Student: IFSS support, the "highest level of services that DDS provides to children who meet eligibility." According to DDS, it is not responsible for residential educational services, it is prohibited by its regulations from providing non-educational residential services, it already provides the highest level of home services it could provide, and there is no evidence of any additional services that DDS could provide which it is not. As such, joinder would not be appropriate. Finally, DDS contends that the

²⁵ *In Re: Boston Public School District*, BSEA No. 02-4533 (Figueroa, 2002); see *In Re: Acton-Boxborough Regional School District*, BSEA No. 1703770, 23 MSER 99 (Figueroa, 2017).

BSEA cannot ever order it to provide any service, as all its services are subject to appropriation, and can only be provided in accordance with the regulatory process established to prioritize services.

Contrary to DDS's assertions, however, the District contends in its *Motion* that DDS services exist that are not currently being offered to Student which may be appropriate, namely services associated with the CERP as well as IFFS services for which, as noted earlier, there is unclear information presented. Moreover, for purposes of addressing joinder, it is not necessary that the District present evidence, as DDS claims, of services that DDS could be ordered to provide to Student. The District must only "in a preliminary way" establish that it could feasibly present such evidence of services or supports that DDS could be responsible for providing at a hearing²⁶. The District has done so.

Additionally, while I also agree that, as with DMH, the only entity responsible for funding a residential educational placement for Student is the District, and, that unlike DMH, DDS's regulations preclude me from ordering it to fund the residential portion of a non-educational residential placement, I do not find DDS's regulatory provisions to ever prohibit an order for supports or services from DDS to be made in this matter. For instance, even if I find Student needs a residential educational placement, there may be supports or services that fall within DDS's purview (as they are not otherwise the responsibility of the District or another public agency), that may assist the Student in engaging in home visits or community outings²⁷. Thus, I conclude that joinder of DDS will ensure that the full range of alternatives for fashioning relief is available so that an adequate judgement may be entered.

Finally, I find that the BSEA is not only the appropriate forum, but the only forum, to resolve the dispute as to the FAPE and non-educational placement needs of Student at issue in this matter²⁸. Therefore, having considered the requisite factors for joinder, in tandem with the rules, regulations and policies of both DMH and DDS, the District's *Motion* is hereby **ALLOWED**, and DMH and DDS are joined as parties to this matter.

Accordingly, the above-referenced matter will proceed with the Parent, District, DMH and DDS as follows:

²⁶ *Id.*

²⁷ I also do not find that the regulatory process for prioritizing services or the fact that DDS services for children under 22 are always subject to appropriation bars me, at this stage, from joining them in this matter. There is a possibility that IFFS supports (that DDS acknowledged in the *DDS Opposition* to include respite, family training, individual goods and services, adaptive aids, therapy and behavioral consultation) which DDS has already funded may need to be utilized in a different location. Additionally, it is possible that DDS IFFS services or supports may be identified during the course of the hearing that DDS has approved but that are not being utilized fully, which I may find DDS to be responsible for providing.

²⁸ Both DMH and DDS argue that there are alternative available forums under their own appeal procedures that families can pursue to address denials or disagreements with services provided by or refused to be provided by each agency. However, if the reason for such denial of services is due to the agency's belief that such services are needed for educational reasons, then it is solely the BSEA, not the individual agency, with the statutory authority to make this determination. 20 USC §1415(b)(6); M.G.L. c. 71 § 2A; see 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a).

1. The Parties will participate in a further Conference Call on August 2, 2022, at 9:30 a.m. The Parties are instructed to call the following phone number: 1-877-820-7831 at that time and enter the following passcode when prompted: 721959#. The purpose of this Call is to discuss and confirm the Hearing dates and any other necessary procedural pre-hearing events.

The parties are reminded that all requests for postponement must be in writing and specify the reasons for requesting the postponement and the length of the postponement desired/agreed upon. Should the parties reach a settlement agreement prior to the Hearing, the moving party shall submit a written withdrawal of the hearing request. Failure to appear at the Hearing may result in dismissal of the matter with or without prejudice.

All requests for a stenographer must be made in writing.

So Ordered by the Hearing Officer

/s/ Marguerite M. Mitchell

Marguerite M. Mitchell

Dated: July 22, 2021