

**COMMONWEALTH OF MASSACHUSETTS**  
***Division of Administrative Law Appeals***  
**Bureau of Special Education Appeals**

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

**BSEA # 2212418**

**RULING ON BOSTON PUBLIC SCHOOLS' MOTION TO JOIN THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES**

On July 6, 2022, Boston Public Schools (Boston) filed a Motion to Join the Department of Developmental Services (DDS) in the above-referenced matter pursuant to Rule 1J of the Hearing Rules for Special Education Appeals, alleging that DDS is a necessary party as complete relief cannot be granted in its absence. Relying on Chapter 159, section 162 of the Acts of 2000, amending M.G.L. c. 71B §3 and 603 CMR 28.08(3), Boston asserts the jurisdictional authority of the BSEA over state agencies (including DDS) to resolve disputes involving special education and argues that joinder of DDS is warranted in the instant case.

According to Boston, Student does not require residential placement for educational reasons. Boston argues that Student's successful transition from the hospital to the home, and maintenance in a less restrictive educational setting depends in part on the supports DDS is able/ responsible to provide Student in the home and community. Thus, according to Boston, Student's ability to avail himself of a FAPE depends in part on DDS' participation and, thus, DDS is a necessary party and must be joined.

On July 18, 2022, DDS filed<sup>1</sup> an Opposition to Boston's Motion for Joinder disputing that it is a necessary party and noting that its joinder is precluded per Rule 1J of the *Hearing Rules for Special Education Appeals*. DDS asserts that while it has offered Student the highest degree possible of services in existence for individuals under the age of 22, including DDS/ DESE sponsored services, Boston has failed to offer the level of in-home services and supports that Student needs. DDS argues that since it is already offering the maximum level of services available to under age 22 individuals there is nothing else it can do for Student, thus, it is not a necessary party to the instant case.

Parent did not file a response or otherwise state her position regarding this Motion. Thus, this Ruling is issued in consideration of the submissions made by Boston and DDS.

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<sup>1</sup> DDS states that it received Boston's Motion on July 13, 2022.

**Facts<sup>2</sup>:**

Student is a 17-year-old resident of Boston who has been diagnosed with Autism Spectrum Disorder and who is eligible to receive special education services under a category of Autism. Student has also been found eligible to receive DDS services.

In late February of 2022, Student was hospitalized due to aggression at home and in the community and has been eligible for discharge since May of 2022. Student remains in the hospital, however, as Parent refuses to bring him home due to concerns regarding her ability to manage his behavior. Parent has made several requests for Student to be placed in a residential educational placement. Boston disagrees that Student requires residential placement for educational reasons. Instead, Boston asserts that Student can transition successfully to his home with appropriate home supports and can return to his substantially separate ABA-based program at Boston's Charlestown High School (his stay-put program).

According to Boston, a successful transition from the home to the proposed school program can be achieved through Parent training aimed at promoting behaviors that will increase Student's safety in the home. As such, Boston has proposed one hour per week of BCBA consultation and five hours per week of ABA services in the home. Additionally, Boston will provide twelve hours per week of compensatory ABA services noting that thereafter, Student's Team will reconvene to assess the appropriate level of home ABA services moving forward. According to Boston, these services are appropriate and will allow Student to remain in a less restrictive setting.

Student is eligible to receive DDS services which at present do not include direct services in the home or the community. Boston argues that DDS expertise and services are essential to Student's successful transition from the hospital to the home, as this matter turns on the level and appropriateness of in-home supports needed by Parent and Student.

Between June 10, 2019, and January 24, 2022, Student participated in DDS funded Intensive Flexible Family Support Services (IFFS). IFFS services consist of specialized family support services designed for children under the age of 22 who are at risk of needing residential educational placement; IFFS help families care for eligible individuals in the home setting by supporting the caregiver through parent model training. Through IFFS Student also received a flexible funding stipend, respite services, case management and educational materials.

Additionally, between March 25 and June 30, 2021, DDS funded an after-school program for Student through TILL at TRASE. Furthermore, in coordination with Boston, DDS funded a one-to-one staff support for Student at Charlestown High School, during transportation to and from the home to school, and at home. Student

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<sup>2</sup> The Facts herein are deemed to be true solely for the purpose of ruling on this motion.

was not successful with this program and thus the one-to-one staff support services were discontinued for the 2021-2022 school year.

According to DDS, the agency has provided Student with the highest level of interventions for individuals under age 22 through DESE/DDS Residential Prevention Returns Program funds. DDS contracts with Vinfen, which manages the budget and assists in securing staff to work with the DDS/ DESE participant. Participants do not receive wraparound services through this program. Rather, the program is designed to fill the gaps between what the school offers and what the family may be eligible to receive through health insurance, and often constitutes 3 to 10 hours of per week of in-home or community-based skill training or therapy. While eligible, Student is not currently receiving the aforementioned services, although DDS has offered training and respite (to the extent possible) while Student was in the hospital. (Residential placement is not among the services offered through DDS to individuals under 22 years old.)

Additionally, at present, Student is on a wait list to receive ABA services through his health insurance.

Disagreeing with Boston's position over Student's need for residential placement for educational reasons, Parent filed a Hearing Request against Boston on June 23, 2022, and at the request of the Parties the Hearing was postponed to November 15, 16 and 17, 2022 for good cause.

### **Legal Framework:**

Joinder of a party in the context of a BSEA hearing must comply with the requirements delineated in Rule I.J of the *Hearing Rules for Special Education Appeals*.<sup>3</sup> Said Rule provides for joinder of an additional party when complete relief cannot be granted as among those parties already present.

The authority of a BSEA hearing officer to join a state agency to a BSEA proceeding is found in 603 CMR 28.8(3). Specifically, this regulation grants the BSEA Hearing Officer authority

to order a state agency to provide services found necessary to enable the receipt of a free and appropriate public education or to provide services above and beyond those services that are the responsibility of the public school district, if those services are necessary to ensure that the student can access or benefit from a special education program and services provided by the public school district, as long as the services ordered to be provided by the agency are among those services offered

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<sup>3</sup> Parent asserts the BSEA's authority to adjudicate special education matters as against state agencies consistent with 603 CMR 28.08(3) *et seq.* and DDS has not challenged this authority.

in accordance with the rules, regulations and policies of the respective agency.” Ruling on *Lenox Public Schools’ Motion to Join the Department of Children and Families and the Department of Mental Health, In Re: Student v. Lenox Public Schools and Beverly Public Schools*, BSEA #2209086 (7/28/2022).

Consistent with the aforementioned regulation, the BSEA has consistently maintained that, as a precondition for an agency’s joinder, the agency sought to be joined has found the student and/or family eligible for the agency’s services and/or involvement. –

In the instant case the parties agree that Student is eligible to receive DDS services and DDS asserts that he has been offered the maximum level of services available through DDS to individuals who are under 22 years of age. For this reason, DDS argues that its joinder is unnecessary. I disagree.

Parent and Boston disagree as to whether Student requires residential placement to address his current presentation. That is the central issue. If the evidence at hearing supports a finding that Student requires an educational residential placement, Boston would be solely responsible to fund said placement; but, at this juncture, such a finding would be premature. It is conceivable that the evidence supports a finding favoring a less restrictive educational placement, such as the one Boston describes. If so, Student’s success in such less restrictive placement may well depend on sufficiently intense interagency in-home supports and the effective and consistent interagency coordination of intensive home-based and community-based services. In light of this potential outcome of the hearing, Boston is persuasive in its argument that DDS’ participation as a party is essential.

Therefore, consistent with Chapter 159, section 162 of the Acts of 2000, amending M.G.L. c. 71B §3 and 603 CMR 28.08(3) and pursuant to Rule VI of the *Hearing Rules for Special Education Appeals*, Boston’s Motion to Join DDS is **GRANTED**. DDS is hereby joined as a party in the instant case.

Order:

1. Boston’s Motion to Join DDS to BSEA #2212418 is hereby **GRANTED**. DDS is hereby **JOINED**.

So Ordered by the Hearing Officer,

*Rosa I. Figueroa*

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Rosa I. Figueroa

Dated: August 19, 2022