**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student & Franklin Public Schools & BSEA # 2500429**

 **Massachusetts Department of Developmental Services (DDS)**

**RULING ON FRANKLIN PUBLIC SCHOOL DISTRICT’S MOTION TO JOIN**

**THE MASSACHUSETTS DEPARTMENT OF DEVELOPMENTAL SERVICES**

This matter comes before the Hearing Officer on the Franklin Public School District’s (District) *Motion to Join the Massachusetts Department of Developmental Services as a Necessary Party (Motion)*, filed with the BSEA on January 10, 2025. The District seeks joinder of the Massachusetts Department of Developmental Services (DDS) as a necessary party in accordance with Rule I(J) of the Bureau of Special Education Appeals (BSEA) *Hearing Rules for Special Education Appeals (Hearing Rules)*, claiming complete relief cannot be granted in its absence.

Specifically, the District contends that Student requires significant support and services from DDS in order to access a free and appropriate public education (FAPE) on an interim basis at home, or at an out of district day educational program, while the District identifies an appropriate residential program for Student to attend as a result of his termination from his prior residential program in January 2024. Although the District does not dispute Student’s need for placement in a residential educational program to receive a FAPE, it has thus far been unable to locate an available interim day or new residential program since the commencement of the underlying matter.

Further, despite its ongoing efforts to provide interim services within the home, the District submits that additional “developmental/behavioral support services” from DDS are necessary to support the intensity of services that Student requires, and the need for significant coordination and availability of consistent home-based staff required for Student to access and receive a FAPE “while the District attempts to identify a [new] appropriate residential program”. Thus, the District argues that DDS must be joined as a necessary party to ensure that there is “a full adjudication of [Student’s] rights to educational and related services provided in Massachusetts by educational and human service agencies”.

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

**RELEVANT PROCEDURAL HISTORY**

On July 11, 2024, Parent, who is Student’s legal guardian, and has sole educational-decision making authority for Student, filed a *Hearing Request (Hearing Request)* in this matter, challenging procedural and substantive issues relating to a proposed IEP that the District had issued on or about May 23, 2024. Said IEP called for Student’s placement in a residential educational program at the Evergreen Center (Evergreen). Procedurally, Parent challenged the process by which this IEP had been developed; the limited time of 24 hours that she had been provided to respond to this IEP; and the delay in the District’s submission of the wholly rejected IEP to the BSEA. Substantively, Parent challenged the removal of “eleven” services from the service delivery grid without any evaluations or professional recommendations to support the same; the elimination of services related to the Expanded Core Curriculum (ECC) that is necessary for Student due to his visual impairments; the lack of involvement of a Teacher of the Visually Impaired (TVI) to provide staff at Evergreen with training and instruction on assistive technology (AT) necessary to support Student’s learning; and the lack of transition services. Parent sought compensatory services for the services that Student was owed from his last accepted IEP. Parent also requested that “referrals for placement(s) should be placed on hold until [Student’s] needs are assessed and identified so that a potential placement can make an informed decision when evaluating [Student] for placement and proposal of (sic) IEP/service delivery grid”.

On the same date, a *Notice of Hearing* was issued by the Bureau of Special Education Appeals, scheduling the matter for a hearing on August 14, 2024. During the initial Conference Call held on July 29, 2024, the Parties advised that they sought to participate in a resolution session, and, if necessary, a pre-hearing conference, and as a result jointly requested postponement of the hearing, which was approved by this Hearing Officer for good cause.

The District filed a timely *Response* to the *Hearing Request* (*Response*), disputing the claims raised by Parent and setting forth a summary of the timeline associated with Student’s termination from his prior residential program; the parties dispute resolution pursuits; the prior residential program’s offered and rejected interim services; and the Team discussions with regard to the proposed IEP for placement at Evergreen that Parent rejected. Specifically, the District asserted that that Student “requires a comprehensive school placement rather than home services”; that Evergreen was an appropriate placement for Student; that it offered appropriate interim services to Student; and disputed that it owed Student any compensatory services or that it had violated any procedural requirements[[1]](#footnote-1).

A pre-hearing conference was held on September 5, 2024, wherein the Parties discussed the status of at least 10 referral packets that were pending at private approved residential programs, and Parent agreed to consent to sending additional referral packets to private approved residential programs. Additionally, the Parties discussed the status and implementation of various interim services for Student in the home, pending acceptance to a new residential educational program, as well as pursuing placement in private approved day programs on an interim basis. So as to provide additional time to pursue placement, the Parties requested a further postponement of the hearing and agreed to participate in regularly scheduled status Conference Calls. The hearing was thereafter further postponed for good cause.

During the regularly scheduled status Conference Calls, the Parties reported that one day program was considering accepting Student. The Parties remained actively engaged in the review process with the one potential day program through December, 2024[[2]](#footnote-2). Unfortunately, on January 7, 2025, the Parties were advised that this potential day placement would not accept Student. As such, in addition to re-issuing proposed referrals to approved private residential and interim day programs, on January 10, 2025, the District filed the underlying *Motion*.

On January 17, 2025, Parent advised by email that she gave her “consent” for the joinder of DDS in this matter. Parent also provided consents for new referrals to be sent to some of the proposed approved private residential and interim day programs, and indicated she was still considering additional proposals[[3]](#footnote-3).

On January 21, 2025, DDS filed its *Massachusetts Department of Developmental Services Opposition to Franklin Public Schools’ Joinder Motion* with a supporting *Memorandum* (collectively *Opposition*), contending that joinder is not necessary for complete relief to be granted in this matter and is not “warranted under state law, regulation or the facts in this matter …”.

**FACTS[[4]](#footnote-4)**

1. Student is currently 19 years old. Student’s eligibility for special education services and support under the disability categories of Sensory/Vision Impairment or Blindness, Intellectual and Neurological are not in dispute. (*Hearing Request*; *Response*; *Opposition*; *Motion, Exhibit A*).
2. Prior to the filing of this *Hearing Request* and at all times since then, Student has received Children’s Support services through DDS, that DDS advises includes “stabilization funds 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.” Additionally, on August 21, 2023, Student was found eligible to receive Adult Community Developmental Disability Supports on or after [a specific date in] 2028, which date DDS noted to be “beginning on his twenty-second birthday[[5]](#footnote-5)”. (*Opposition*).
3. Student’s most recent placement was a residential educational program at the Perkins School for the Blind (Perkins), however this placement was terminated by Perkins in or about February 6, 2024 for reasons not substantially relevant to the *Motion*. (*Hearing Request*; *Response*; *Opposition*; *Motion, Exhibits B and C*).
4. On January 29, 2024, Perkins offered short-term day placement services “while another placement is being secured” with conditions that restricted Parent’s communication with any service providers, other than in writing, except in an emergency, and then only with specific personnel “in the presence of two staff members”. Thereafter, on March 4, 2024, Perkins offered to fund two (2) hours of remote tutoring “per weekday … during periods Perkins is in session for the purpose of working on IEP academic goals” via a third-party tutor also as an interim measure “until [Student] begin[s] enrollment in another school setting”, also with conditions that prohibited “direct contact or communications between any Perkins staff and [Parent] at any time”, among other conditions. Parent declined both of these interim offers given the communication restrictions. (*Response*; *Motion, Exhibit C*).
5. Since January 2024, Student has received Family Support Services from DDS “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” based upon family need, and availability of funding resources. Student also received “$500 of flex funding in January 2024 after he did not return to Perkins”. (*Opposition*).
6. On May 3, 2024 Student was accepted for placement at the Evergreen Center’s (Evergreen) residential educational program, provided modifications could be made to his IEP, which Evergreen and the District claimed had been written for Perkins’ unique programming. (*Response*).
7. A Team meeting was held on May 22, 2024, wherein the District proposed an IEP to reflect placement at Evergreen (May 2024 IEP). The May 2024 IEP made adjustments to the service delivery grid from prior IEPs, including but not limited to replacing direct services with staff consultation. Franklin also proposed to hire a TVI to provide consultative support to Student at Evergreen. Parent wholly rejected this IEP. The Parties dispute if Parent also rejected placement at Evergreen. Regardless, by the time the *Hearing Request* was filed, Evergreen had filled Student’s seat. (*Hearing Request*; *Response*; *Motion, Exhibit C*).
8. Student’s “stay put” IEP is dated 03/07/2023 to 03/06/2024 (“Stay Put IEP”) and was prepared while Student was attending the Perkins Secondary School program, with no anticipation of termination of services[[6]](#footnote-6). It includes numerous accommodations in all curriculum areas of PLEP-A, and, in PLEP-B, adapted physical education; assistive tech devices/services; behavior; communication; extra-curricular activities; social/emotional needs; skill development related to vocational preparation or experience; physical therapy; occupational therapy; music therapy; orientation & mobility; course of study for students over the age of 14; and transition activities and related community, employment and daily living skills. Goals comprise Functional English Skills; Applied Money Skills; Self-Regulation Skills; Physical Literacy and Moter Skills; Orientation & Mobility Skills; Independent Living Skills; Communication Skills; and Vocational Skills. The service delivery grid calls for services to address both the general curriculum and the expanded core curriculum for the blind and visually impaired. Specifically, A-Grid services consist of Consultation in the area of Technology 1 x 25 minutes/month; Family Contact 1 x 25 minutes/week; Transition 1 x 25 minutes/month; Case Management 1 x 50 minutes/week; Physical Therapy 1 x 25 minutes/month; Orientation and Mobility 1 x 25 minutes/month; Occupational Therapy 1 x 25 minutes/month; and Speech and Language Pathology 1 x 25 minutes/month. There are no services in the B-Grid. C-Grid services consist of Academics with a Teacher of Students with Visual Impairments and/or a Special Education Teacher 13 x 50 minutes/week; Individual Counseling 1 x 25 minutes/week and Group Counseling 1 x 50 minutes/week, both with a Social Worker and/or School Psychologist; Music Therapy with a Music Therapist 1 x 50 minutes/week; Sensory Group with an OT and/or PT and/or Special Education staff member 1 x 25 minutes/week; Adaptive Physical Education 2 x 50 minutes/week; Physical Therapy 2 x 25 minutes/week; Orientation and Mobility 2 x 25 minutes/week; Community Experience with a Special Education Teacher 1 x 110 minutes/week; Residential Programming (to address Independent Living Skills) 7 x 300 minutes/week; Home/Personal Management with a Special Education Teacher 2 x 50 minutes/week; Occupational Therapy 2 x 25 minutes/week; Leisure and Recreation Skills with a Special Education Teacher 2 x 50 minutes/week; Individual Speech Therapy 1 x 25 minutes/week; Group Speech Therapy 1 x 50 minutes/week; and Vocational Services with a Vocational Teacher 4 x 50 minutes/week. The Stay Put IEP also calls for both an extended day and an extended (11 month) school year. (*Motion, Exhibit A*).
9. Since Student’s termination from Perkins he has been at home. The District has provided some but not all of the educational and related services called for in Student’s Stay Put IEP in the home, but has consistently acknowledged that “the[se] services cannot replicate those that would be provided in a school setting”. (*Hearing Request*; *Response*; *Motion, Exhibit C*).
10. In July 2024 Parent filed the underlying *Hearing Request* raising substantive and procedural challenges to the development and proposal of the May 2024 IEP, particularly with respect to its elimination of services from the Stay Put IEP. Parent also sought compensatory services for Student since his termination from Perkins. (*Hearing Request*).
11. Since February 2024, despite Parent’s request in the *Hearing Request* to put referrals “on hold”, the Parties have actively pursued referrals to numerous out of district Chapter 766-approved residential and, on an interim basis, out of district approved day programs for Student. However, Student has not been accepted to any other residential or day program since Evergreen. The District has not pursued placement of Student in any non-approved programs. Further, Parent has consented to sending referral packets to some, but not all, of the programs the District has proposed.
12. Recently, Student’s DDS Family Support Services were expanded to include funding for joint DDS/Department of Elementary and Secondary Education (DESE) in-home educational services until a new residential placement was identified by the District. This program “… is in the process of being set up. An agency has been identified, and their contact is going to reach out to the guardian.” As part of this program, Student is expected to receive 44 hours of “Family Support Navigation (3700) for FY 25 and 48 hours for Fy26. He will receive $5,000 for DDES/DESE support services (3738) for FY 25 and $10,000 for FY26”. (*Opposition*).

**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* concerning: (i) any matter relating to the identification, evaluation, education program or educational placement of a child with a disability or the provision of a free and appropriate public education to the child arising under this chapter and regulations promulgated hereunder or under the Individuals with Disabilities Education Act, 20 U.S.C. section 1400 et seq., and its regulations; or (ii) a student's rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, and its regulations” (emphasis added).

In order for the Hearing Officer to order the State agency to offer services, the student must be eligible to receive those services from that state agency[[7]](#footnote-7). Moreover, the extent to which the BSEA may order services to be provided by another state agency is set forth in Mass. Gen. Laws c. 71B, § 3, which provides, in relevant part:

"The [BSEA] 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 mental retardation [now the department of developmental services], …, in addition to the program and related services to be provided by the school committee”[[8]](#footnote-8).

The ”in addition to” language within the statute has been consistently interpreted by BSEA Hearing Officers to mean that if services that the human service agency provides in accordance with its rules and policies, are necessary for a student to access or benefit from the school district’s special education program “(over and above those services that are the responsibility of the school district)”, joinder may be appropriate[[9]](#footnote-9). In other words, joinder is allowed if a “free appropriate public education can[not] be developed, delivered, declared or guaranteed without the participation of the state agency sought to be joined”[[10]](#footnote-10).

With these statutory and procedural dictates in mind, I consider the District’s *Motion.*

**APPLICATION OF LEGAL STANDARD**

The District is requesting the joinder of DDS, a state agency, in a matter involving a dispute over the procedural and substantive appropriateness of a proposed IEP (i.e., the May 2024 IEP) to provide Student with a FAPE, and a claim for compensatory services, issues that clearly fall within the jurisdictional authority of the BSEA pursuant to M.G.L. c. 71B §2A. These issues arise in the context of a student whose residential educational placement was terminated by his prior residential educational program, and who has yet to be placed in another residential or interim day educational program.

Student’s prior and ongoing eligibility for DDS services, and his need for a residential educational program are not in dispute. Further, Parent supports joinder of DDS. DDS, however, contends that I am unable to order it to provide additional services in this matter, as doing so would be contrary to its rules, regulations and policies. Upon examination of DDS’s regulations, in the context of the facts and circumstances pertaining to Student at this time, I do not find such a restriction to exist[[11]](#footnote-11).

According to 115 CMR 6.07(2) students who are eligible for available Children’s Supports, are entitled to services to “enable the family to stay together and to be contributing member of their communities … [that] are intended to assist, not to replace or substitute for the child’s family”[[12]](#footnote-12). Priority to receive available Children’s Supports are “based on the severity of the child’s or young adult’s or family’s needs”[[13]](#footnote-13), and, with two exceptions, residential supports may be an available option[[14]](#footnote-14). Neither exception applies to Student in this case, given the failure of any educational program to have accepted him since the commencement of this matter. Rather, for the past year, Student, has remained without his necessary residential educational program, despite an active ongoing referral process, and the District’s intention to wholly fund the same when available[[15]](#footnote-15). Thus, DDS’s regulations do not preclude its joinder in this matter, and it is possible that I could ultimately determine Student needs to receive additional available DDS Children’s Support services, if only on an interim basis[[16]](#footnote-16).

In its opposition to joinder DDS further contents that Parent has “rejected several residential placements that [the District] has offered”. This is not wholly accurate. Although Parent rejected the proposed May 2024 IEP that would have placed Student at Evergreen, such rejection was related to the services being proposed under the IEP at Evergreen (that is, Parent considered the services to be an improper reduction in the services called for under the Stay Put IEP). While the Parties dispute whether Parent rejected Evergreen itself as a placement, it is indisputable that Evergreen filled Student’s seat and is no longer a viable placement for him. Further, no other residential or interim day program has accepted Student, despite the Parties’ ongoing search efforts. Thus, the District has not actually been able to offer Student any other residential or interim day program for Parent to accept or reject.

I, therefore, find that in the unique context of this matter, all the factors to be considered for joinder support joining DDS as a party[[17]](#footnote-17). As noted above, the BSEA is not only the appropriate forum but the only forum to resolve the issues in this matter[[18]](#footnote-18). Joinder of DDS is essential to reduce the risk of prejudice to the Parties in the absence of DDS, and to ensure that all possible options for appropriate relief are available both on an interim and a permanent basis, allowing for fair judgment to be made. Including DDS as a party enables options for relief that are not possible without its involvement. Specifically, after a hearing on the merits it is feasible that I may need to issue interim and other orders pertaining to the education and related services Student requires to meet his current, future and compensatory needs. I would not, however, be able to order such comprehensive relief without the participation of DDS.

Having therefore considered the requisite factors for joinder, in tandem with Parent’s support and DDS’s opposition to the District’s *Motion*, the District’s *Motion* is hereby **ALLOWED,** and DDS is ordered to be joined as a party to this matter.

Accordingly, the above-referenced matter will proceed with the Parties, inclusive of DDS, participating in a Conference Call on January 22, 2024 at 4:00 p.m. The Parties are instructed to call the following phone number: 1-(857) 327-9245 at that time and then enter the following passcode when prompted: 133 966 91#.

By the Hearing Officer,

/s/ Marguerite M. Mitchell
Marguerite M. Mitchell

Date: January 22, 2025

1. As noted below, after commencement of this matter, the District was advised by Evergreen that it had filled Student’s potential spot and it was no longer available as a placement for Student. [↑](#footnote-ref-1)
2. To that end, Parent interviewed with this potential placement, visited the same, and thereafter Student visited the potential placement. [↑](#footnote-ref-2)
3. Among the proposals Parent was still considering was engaging in an Interagency Review Team (IRT) process to identify program options for Student pursuant to the provisions of 101 CMR 27.01, entitled “Interagency Review of Complex Cases”. [↑](#footnote-ref-3)
4. The facts stated herein are considered to be true solely for the purposes of this *Ruling*. [↑](#footnote-ref-4)
5. However, the date DDS identified in its *Opposition* is actually two days prior to Student’s birthday. [↑](#footnote-ref-5)
6. In its *Opposition*, the District references an IEP dated 2/1/24 – 1/31/25. The IEP attached to the *Motion* is dated 3/7/23 – 3/6/24, however, and this is the IEP I will rely upon as being the “stay put” IEP for purposes of this *Motion*. At a hearing on the merits, I anticipate that I will be provided with all relevant IEPs and amendments, and my finding as to the “stay put” IEP may change as a result. [↑](#footnote-ref-6)
7. *In Re: Acton-Boxborough Reg. Sch. Dist.*, BSEA No. 1703770, 23 MSER 99 (Figueroa, 2017); see M.G.L. c. 71B §3; *In Re: Boston Pub. Sch. Dist.*, BSEA No. 02-4553 (Figueroa, 2002). [↑](#footnote-ref-7)
8. MGL c. 71B, s. 3; see 603 CMR 28.08(3). [↑](#footnote-ref-8)
9. *In Re: Plymouth Pub. Sch.* BSEA No. 06-2584, 12 MSER 33 (Crane, 2006) (internal citations omitted). [↑](#footnote-ref-9)
10. *In Re: Fitchburg Pub. Sch.* BSEA No. 02-0038, 8 MSER 141 (Byrne, 2002). [↑](#footnote-ref-10)
11. See, generally 115 CMR 6.00 et. seq. [↑](#footnote-ref-11)
12. 115 CMR 6.07(2)(a). [↑](#footnote-ref-12)
13. 115 CMR 6.07(2)(b). [↑](#footnote-ref-13)
14. See 115 CMR 6.07(2)(c) (prohibiting residential supports when students receiving available Children’s Supports services are also “eligible or receiving residential services from a local educational authority, local school district or any other public agency”; 115 CMR 6.07(2)(d) (presuming residential supports are not needed for a Children’s Support recipient child who is “currently in the care or custody of, committed to, subject to court-ordered supervision of or is eligible for or receiving 24-hour residential services through another public agency…”). [↑](#footnote-ref-14)
15. The District’s position in this matter is different from cases involving a dispute over a Student’s need for a residential educational placement to receive a FAPE, or which public agency is responsible for funding a residential program for a student, and thus arguments against joinder that may apply to those issues are not relevant here. [↑](#footnote-ref-15)
16. See 115 CMR 16.08 (providing for redetermination of eligibility and prioritization “… after one year has passed since the most recent determination and the individual’s circumstances have changed.”); 115 CMR 6.09 (providing for “Emergency Provision of Supports” with the consent of a parent when “there is reason to believe that a person … is eligible for Children’s Supports [and] if the absence of supports creates a serious or immediate threat to the health or safety of the person or others”.) [↑](#footnote-ref-16)
17. See *In Re: Plymouth*, BSEA No. 06-2584, (joining a different state agency, DMH, and reasoning in part that “[i]n the instant dispute, however, the apparent severity of Student's mental health needs, the current involvement and expertise of DMH, the likely usefulness of DMH's participation in the Hearing regarding my determination of Student's needs and how they should be met… all argue in favor of a single BSEA hearing with DMH as a party.”); *In Re: Fitchburg*, BSEA No. 02-0038. [↑](#footnote-ref-17)
18. 20 USC §1415(b)(6); M.G.L. c. 71 § 2A; see 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a); see 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a). [↑](#footnote-ref-18)