**COMMONWEALTH OF MASSACHUSETTS**

*Division of Administrative Law Appeals*

**Bureau of Special Education Appeals**

**In Re** Studentv. **BSEA #** 2505721

 Boston Public Schools

**Ruling on Parent’s Motion to Join the Department of Children and Families**

Parent in the above-referenced matter filed a Hearing Request on December 6, 2024. Thereafter, on December 19, 2024, Parent filed a Motion to Join the Department of Children and Families (DCF).[[1]](#footnote-1) On December 23, 2024, DCF filed an Opposition to Parent’s Motion.

The Parties filed a joint request for postponement on December 20, 2024, which was granted via Order dated December 20, 2024. Said Order further scheduled the Hearing to proceed on March 10 and 112025.

This matter involves a 13-year-old eligible Student placed in a substantially separate program in Boston due to an emotional impairment. Parent seeks residential placement for Student.

Student has been involved with DCF on and off since 2019. Most recently, during the 2023-2024 school year, Boston filed a Child Requiring Assistance (CRA) application in response to Student’s significant truancy, and on April 18, 2024, Parent filed a Stubborn CRA when Student’s impulsivity, poor decision-making and emotional dysregulation in the home and the community became difficult to manage. The Court dismissed the truancy CRA and in its place accepted the Stubborn CRA application. Student’s challenges have persisted, and Parent has requested that her court date be advanced to enable her to request transferring custody of Student to DCF.

In the instant matter, Parent argues that joinder of DCF is

…necessary to mitigate the risk of prejudice to the present parties and to ensure that the full range of alternatives for fashioning relief is available. DCF’s party status would provide options for relief which would not otherwise be available in DCF’s absence. (Parent’s Motion).

As such, Parent seeks joinder of DCF. Boston takes no position with respect to this Motion.

While DCF does not dispute the BSEA’s general jurisdiction over said agency in the context of special education matters, it argues that joinder in this case is not appropriate because the BSEA cannot, consistent with DCF rules, regulations or policies, order DCF to provide the remedy Parent seeks, that is, residential placement. DCF notes that while Student is currently involved with DCF, Student is not in its care or custody consistent with 110 CMR 4.06, a necessary requirement for DCF to provide residential placement to children. Moreover, DCF asserts that it has no intention of taking custody of Student at a future court proceeding addressing custody. As such, DCF asserts that it is not a necessary party for the adjudication of the BSEA proceeding, and thus joinder is not appropriate.

This Ruling is issued in consideration of Parent’s and DCF’s submissions, applicable laws, regulations and BSEA Rules addressing joinder.

**Legal standard**:

Joinder of a party in the context of a BSEA Hearing is found in Rule 1(J) of the *Hearing Rules for Special Education Appeals* (*Hearing Rules*) allowing Hearing Officers to join a party upon written request, in cases where, “complete relief cannot be granted among those who are already parties, or the person 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 their absence.” In considering joinder of a party, several factors must be evaluated such as: “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 issues.” *Hearing Rules*, Rule 1(J).

A BSEA Hearing Officer is bound by the jurisdictional authority of the BSEA and relevant federal and state special education laws and regulations when considering the criteria for joinder of a party. In Massachusetts the jurisdiction of the BSEA is limited to that grant of authority found in 20 USC §1415(b)(6); M.G.L. c.71B §2A; 34 CFR 300.507(a)(1); 603 CMR 28.08 (3); and Section 504 of the Rehabilitation Act of 1973.

Specifically, 603 CMR 28.08(3), delineates the types of controversies that may be entertained and the parties among whom those disputes may be heard. In pertinent part, said regulation notes that the BSEA may hear controversies involving

“… the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities. A parent of a student with a disability may also request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973, as set forth in 34 CFR §§104-31-104-39.” 603 CMR 28.08(3).

Moreover, pursuant to G.L. c. 71B §2A and 603 CMR 28.08(3), Massachusetts BSEA Hearing Officers are authorized to resolve special education related disputes “among school districts, private schools, parents and state agencies”[[2]](#footnote-2). (603 CMR 28.08(3) specifically enumerates the Department of Children and Families, the Department of Developmental Disabilities, the Department of Mental Health, and the Department of Public Health.) However, jurisdiction over state agencies “shall be exercised consistent with 34 CFR §300.154(a)” and the Hearing Officer’s determinations must be consistent with the rules, regulations and policies of the respective agencies. Pursuant to 110 CMR 4.02, *et seq*., DCF lacks the ability to provide placement services to children who are not in DCF’s care or custody. Additionally, in order for DCF to provide placement under voluntary services, parent and DCF must first enter into a voluntary agreement. Absent one of these criteria, DCF may not provide placement, including residential.

 **Discussion/Application of Legal Standards**

The Parties do not dispute the jurisdiction of the BSEA over Massachusetts state agencies in the context of students with disabilities. They also do not dispute that there is currently a relationship between Student and DCF.

In her submission, Parent notes her intention to seek DCF custody for Student at a future court proceeding. At present however, Student is neither in the care nor custody of DCF, which is a requirement for DCF to provide residential placement; nor is DCF “so deeply involved with Student that the possibility of responsibility for services ‘in addition’ to educational services is substantial and not merely speculative”[[3]](#footnote-3). As such, DCF is persuasive in arguing that it is not an appropriate party in the instant matter at the BSEA, because “it has no legally cognizable relationship with Student” at the present time which would allow it to provide the relief sought by Parent. I agree.

As set out *supra*, the undersigned Hearing Officer can only enter orders against an agency consistent with the rules and regulations and policies of said agency. 110 CMR 4.02, *et seq*. specifically preclude provision of placement (including residential placement) unless a student is in the care or custody of DCF, or the parent and the agency have entered into a voluntary agreement. At present, none of these requirements are met and therefore, DCF cannot offer Student placement.

Since Student’s custody status has not yet been decided by the court (and DCF has made it clear that it will not take voluntary custody), Parent’s joinder motion is not appropriate at the present time. If the relationship between DCF and Student changes following the court proceeding, Parent may at that time refile her motion for joinder of DCF in this forum. At present, Parent’s motion is premature and as such must be **DENIED**

**Order**:

1. Parent’s Motion to Join DCF is **DENIED Without Prejudice**.

So Ordered by the Hearing officer,

Rosa I. Figueroa

Rosa I. Figueroa

Dated: February 7, 2025

1. Via email on February 4, 2025, DCF and the Parties were notified that the instant ruling denying DCF’s joinder without prejudice would be issued shortly thereafter. [↑](#footnote-ref-1)
2. 603 CMR 28.08(3). [↑](#footnote-ref-2)
3. See *In Re: Lawrence Public Schools*, BSEA #082804 (2007). See also, *In Re: North Middlesex Regional School District and DCF*, BSEA #1612096 (2016). [↑](#footnote-ref-3)