**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: **Ashland Public Schools & Department of Mental BSEA # 2508203**

 **Health and Department of Children and Families**

**RULING ON MOTIONS TO DISMISS**

This matter comes before the Hearing Officer on the Ashland Public School District’s (District) *Motion to Dismiss* (*District Motion*), filed with the Bureau of Special Education Appeals (BSEA) on February 14, 2025, the Department of Children and Families’ (DCF) *Response to Hearing Request and Motion to Join* (*DCF Motion*) filed on February 18, 2025, and the Department of Mental Health’s (DMH’s) *Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted* (*DMH Motion*) filed on February 21, 2025[[1]](#footnote-1) (collectively *Motions*), seeking dismissal of this matter and/or dismissal of the agency as a Party. The District filed a *Reply to* [*the DCF Motion*] on February 24, 2025, and filed an *Opposition to* [*the DMH Motion*]on February 25, 2025 (collectively *Replies*) opposing dismissal of either DCF or DMH should the matter not otherwise be dismissed based upon the *District Motion*. Parent filed a *Response to* [*the District Motion*], a *Reply to* [*the DCF Motion*] and a *Response to* [*the DMH Motion*]on March 14, 2025[[2]](#footnote-2) (collectively *Oppositions*)opposing dismissal of the matter or of any Party.

A Hearing on the *Motions*, *Replies* and *Oppositions*, was scheduled for April 8, 2025. However, on March 31, 2025, the Parties filed a joint request to cancel the Motion Hearing and requesting that this *Ruling* be issued solely on the written submissions, which request was allowed on March 31, 2025. As neither testimony nor oral argument would advance the Hearing Officer's understanding of the issues involved and given the joint request of the Parties to cancel the scheduled Motion Hearing, this Ruling is issued without a hearing pursuant to *Hearing Rules for Special Education Appeals* (*Hearing Rules*)Rule VII(D). For the reasons articulated below, the *Motions* are **DENIED**, and this matter will proceed with all existing Parties.

**I. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY:**

 The factual statements set forth are taken as true for purposes of this *Ruling* only.

1. Student is currently in 7th grade and has attended the day program at Doctor Franklin Perkins School, (Perkins) since January 6, 2024. He is diagnosed with post-traumatic stress disorder, reactive attachment disorder, mood disorder (unspecified), attention-deficit/hyperactivity disorder, and specific learning disabilities in writing, reading comprehension and mathematics, with additional challenges with emotional and behavior regulation. (*Hearing Request*).
2. Student had a substantial trauma history during the first two years of his life and transitioned among ten different foster homes until being placed with Parent when he was 4 years old. Parent subsequently adopted Student when he was 6. (*Hearing Request*; *DCF Motion*).
3. Prior to moving to Ashland, Student had been placed at the Walker Residential School (fully funded by his prior school district) until transitioning to a day placement at Walker during the summer of 2022. Parent moved to Ashland that fall, where Student began an extended evaluation in the District’s elementary therapeutic program (*Hearing Request*; *District Motion*; *DCF Motion*).
4. Student was hospitalized twice during the 2022-2023 school year, between March and May 2023. This was consistent with Student’s prior history of averaging at least two extended hospitalizations yearly, resulting in between 1-3 months out of school[[3]](#footnote-3). The hospitalizations that year were due to incidents and behaviors that occurred in the home, not at school. The District had offered to perform a home assessment in December 2022, but Parent did not agree to it. Ultimately, in May 2023, the Parties agreed to a 3rd party vendor completing a Trauma Informed Functional Behavioral Assessment (2023 FBA) that covered both the home and school setting and spanned the end of the 2022-2023 school year and the start of the 2023-2024 school year. (*District Motion*).
5. Since Parent adopted Student, DCF has investigated sixteen 51A reports “each related to the student’s extensive behavioral difficulties and mother’s challenges managing them”. No report has resulted in a determination to remove Student from mother’s care for protective concerns, or the need for DCF to file a care and protection petition. Additionally at no time has a Child Requiring Services application been filed on Student. DCF entered into a voluntary placement agreement with Parent from January 2020 through January 2021 and maintained a clinical case through May 2021. DCF reopened a clinical case on Student in December 2024, as noted further below. (*DCF Motion*).
6. At some time in 2018 and then since May 2023, Student has been deemed eligible for and has received services from DMH consisting of Case Management and Therapeutic Support Services, including in-home therapy, out-of-home therapy and a parent partner. Student has been offered other DMH services during this time (including PACT-Y and Youth Villages services and Intensive Home-Based Therapeutic Care) that Parent has terminated or declined. As noted further below, Student also began to receive out-of-home respite care support in December 2024. (*Hearing Request*; *DMH Motion*).
7. At a Team meeting in May 2023, the District proposed that Student attend Social Studies and Science in the general education classroom and the rest of his day in a substantially separate classroom. Parent partially rejected this IEP in August 2023. (*Hearing Request*).
8. Starting in the fall of 2023, the Parties agreed to an extended evaluation in the District’s elementary language-based program. At the conclusion of this extended evaluation, the District proposed that Student remain in this program, but Parent did not agree. (*Hearing Request*, *District Motion*).
9. Ultimately, Parent and the District executed a settlement agreement in May 2024, covering the summer of 2024, the 2024-2025 school year, the 2025-2026 school year and the summer of 2026 (*Settlement Agreement*). Pursuant to the *Settlement Agreement*, Student began attending Clearway School (Clearway) starting with its summer 2024 program. (*Hearing Request*; *District Motion*).
10. Of relevance, the *Settlement Agreement* contains the following provisions:
11. “The terms contained withing this Agreement fulfill the District’s substantive and procedural obligations to provide an appropriate public education to the Student for the Term of this Agreement”
12. “In the unlikely event that Student suffers an unanticipated and catastrophic illness or injury prior to August 15, 2026, then upon notice by Parent to Ashland, Ashland shall have the right and responsibility to convene a Team meeting to develop an appropriate IEP and to provide him with a free and appropriate public education in accordance with his needs at that time….”.
13. “… Parent, on her own behalf, and on behalf of… Student,… hereby release and forever discharge the District… from any and all… claims of any kind… both KNOWN and UNKNOWN, both in LAW and EQUITY, which the Parent has or ever had against the [District] from the beginning of the world to the date of this Agreement…” (emphasis in original). (*District Motion*).
14. Student’s experience during the 2024 summer program at Clearway was not without incident, and Parent received several calls pertaining to issues involving inappropriate comments, vulgar language and going into someone’s backpack. (*Hearing Request*).
15. From September 2024 through the end of the year, Student experienced significant instances of behavioral dysregulation both at school and at home, that resulted in hospitalizations on September 25, 2024 through September 30, 2024, October 19, 2024 through October 30, 2024, November 19, 2024 and December 20, 2024, as follows:
16. On September 4, 2024, Student was suspended from Clearway returning on September 9, 2024, after agreeing to a safety plan[[4]](#footnote-4);
17. On September 24, 2024, Parent was advised that Student was “making violent drawings, talking about digging a grave for his mother, and contacting a student he was told not to”;
18. The September 25, 2024, incident that led to Student’s hospitalization required Parent to call the police and involved Student “throwing objects, breaking a large picture window in the kitchen, and hitting, kicking, punching and throwing objects at her” while his in-home-therapist was present;
19. The November 19, 2024, incident that led to Student’s hospitalization again required Parent to call the police due to Student’s homicidal ideation towards Parent and his in-home therapist. Student had been prohibited from using his phone so he smashed open the plastic lockbox that held it with a hammer and proceeded to threaten Parent and his in-home therapist with that tool. When Parent did not agree to pick Student up from the hospital, however, a 51A report was filed with DCF on November 22, 2024; and
20. The December 20, 2024, incident that led to Student’s hospitalization involved Student hitting Parent with a shoe and punching her while driving. (*Hearing Request*).
21. Parent is currently undergoing radiation treatment for a brain tumor and takes blood thinners making head injuries particularly dangerous. (*Hearing Request*).
22. A school meeting was held at Clearway on October 21, 2024, wherein Clearway advised the family that they needed to look for another school placement. The District sent out referral packets with Parent’s consent shortly thereafter. In December 2024, Student was accepted at Perkins, and he started attending that program on January 6, 2024. (*Hearing Request*).
23. As a result of Student’s behavioral needs, Parent has received several written recommendations for Student’s placement in a residential program, including:
24. A letter from Student’s pediatrician dated November 25, 2024, recommending that based on “significant safety concerns … as clearly demonstrated by his actions in the last 2 months” consisting of “ongoing behavioral and safety challenges at home and the frequent hospitalizations keeping him out of school” Student requires “at this time” to be educated in a residential school with “support and instruction 24 hours a day that will allow him to receive an appropriate education”;
25. A letter from an Ashland Police Officer written on behalf of Officers responding to 911 calls for services at Student’s home dated December 13, 2024, providing her professional opinion that Student “could seriously harm or kill his mother who is a single parent if he continues to reside with [her] with the current level of support”. The letter noted Student’s “growing size, how out-of-control he is when escalated and that all of the calls for service involve weapons or objects being used as weapons in a violent manner.”; and
26. A letter from a registered nurse dated December 23, 2024, recommending that “a residential school placement would be in [Student’s] best interest to help him with transitions, going to school on a regular basis, keeping him from going in and out of hospitals, as well as safety to himself and others”. (*Hearing Request*).
27. On November 26, 2024, Parent requested a Team meeting due to Student’s unanticipated escalating behaviors. The District denied the request and refused to convene a Team meeting. (*Hearing Request*).
28. Student was placed at a Youth Community Crisis Stabilization program at Clifford Academy between November 25 and December 13, 2024. Since discharge from the Clifford Academy program, he has been spending three to four nights a week at a DMH respite bed run by Open Sky, with his remaining time spent at home. According to DMH, this respite time is “a higher frequency than is typical for that service”. Although not part of the *Settlement Agreement*, the District provides transportation to and from Open Sky for Student. (*Hearing Request*; *District Motion*; *DMH Motion*).
29. On December 10, 2024, upon Student’s acceptance at Perkins, Parent asked DCF about voluntary services but was told to wait until the 51A investigation was completed. (*Hearing Request*).
30. On December 21, 2024, DCF closed their investigation and advised Parent to call to ask for voluntary services. (*Hearing Request*).
31. On or about January 1, 2025, police were again called to the home due to Student’s behavior. Student was banging on Parent’s locked bedroom door with a metal pipe, had attempted a medication overdose, and accessed a ball peen hammer. Additionally, Student discovered a package containing two cannabis gummies resulting in DCF being called anew. DCF advised they were closing this case on January 17, 2025, but then opened a neglect case on January 21, 2025, to “work with mother to ensure” she locks up all potential safety risk items and cooperates with her DMH services “to support herself and student around safety in the home and managing the student’s mental health and behavioral needs”. While the clinical case currently remains open, DCF has not sought custody of Student or agreed to a voluntary placement. (*Hearing Request*; *DCF Motion*).
32. Since attending Perkins, Student’s behavioral dysregulations require restraints at school multiple times a week. His behaviors consist of punching holes in walls to the point of self-injury, ripping baseboards from the wall and putting thumbtacks in his mouth and throwing them at staff. (*Hearing Request*).
33. During January 2025, Student’s behavioral incidents at home involved attacking the family animals, including putting the cat in a trash bag and trying to smother it, throwing things at Parent and the cat, and putting a blanket over Parent’s head to try to strangle and smother her. A DCF Social Worker was present for at least one of the situations. Student was also hospitalized at least once that month. (*Hearing Request*).
34. On February 6, 2025, the police were called to Student’s respite care at Open Sky due to his interactions with another youth. Student had been punching holes in the walls and had to be restrained for 5 minutes that day. The police were able to de-escalate the situation preventing Student from having to be hospitalized. (*Hearing Request*).
35. On February 10, 2025, Parent filed this *Hearing Request* against the District, DCF and DMH, seeking to have one or more of these parties fund a residential placement for Student, a placement that Parent contends is necessary at this time due to “the necessity of frequent hospitalizations render[ing] his access to education simply untenable at any day program … [and his] worsening aggressive and impulsive behaviors [creating] a situation where his and his mother’s safety are at significant risk …”. Parent also requests any and all other remedies deemed appropriate under federal and state special education and disability laws or that the Hearing Officer deems just and necessary. (*Hearing Request*).

**POSITION OF THE PARTIES**

Both DCF and DMH argue that their respective rules, regulations and policies do not allow the relief Parent seeks in this matter –a residential placement for Student. While DCF currently (and at multiple points throughout Student’s life) has an open clinical case for him, it contends that its’ inclusion as a Party in this matter is premature as Student is not in DCF’s “care or custody”. DCF claims it cannot be required, under its regulations, to fund a residential placement for students not in its “care or custody”. Similarly, DMH submits that despite Student’s ongoing eligibility for DMH services, including its provision of respite services at a higher frequency than is typical, the BSEA has no authority to require DMH to “cost-share a private residential school placement in any case including the current matter”. Relying on its CYF Residential Intervention Policy, DMH seeks dismissal as Parent has failed to state a claim upon which relief can be granted by DMH, since the issue in this matter involves whether Student requires a residential educational placement to receive a FAPE.

The District seeks dismissal of the entire matter based upon the terms of the *Settlement Agreement* that is “ongoing” and established its educational responsibilities towards Student through August of 2026. As the District has met its obligations under the *Settlement Agreement* (even going further than is required by providing transportation between Open Sky as well as school), dismissal is warranted because the BSEA does not have jurisdiction to enforce settlement agreements or to otherwise interpret or apply contract law. The District disputes that Student’s current status constitutes “unanticipated or catastrophic illness or injury” given his established diagnoses, history of repeated frequent hospitalizations, and ongoing challenges in the home, as documented in the 2023 FBA. The applicability of the “unanticipated or catastrophic illness or injury” provision is a dispute over a contract term that, under the IDEA, must be brought to the appropriate state or federal court not the BSEA. Not dismissing this matter would also be contrary to public policy as it would “subvert” the intent of federal and state special education laws to promote pre-hearing settlements.

If this matter is not dismissed, the District also opposes dismissal of either DCF or DMH. Regardless of whether DCF can fund a residential placement for students not in its care or custody, DCF’s open clinical case on Student authorizes the BSEA to issue orders to said agency to provide, if needed, other non-residential placement services to ensure Student receives a FAPE. Similarly, even if DMH’s Policy prohibits a residential placement order to DMH[[5]](#footnote-5), Student’s eligibility for DMH services supports maintaining DMH as a party, as “DMH may be involved to provide ancillary services within its services system as clinically indicated and will assist youth in transitioning back to a community-based setting as soon as possible.”

Parent opposes all the *Motions*. As to the *District Motion*, Parent contends that the *Settlement Agreement* does not preclude this matter from being heard. Parent claims she is not seeking to enforce any term of the *Settlement Agreement* but rather is looking for Student to be provided with residential educational services to receive a FAPE based upon a change in circumstances that has occurred since she executed the *Settlement Agreement*. As to the *DCF Motion*, Parent argues that DCF is a necessary Party since Parent has requested more than just a residential placement in her *Hearing Request*, including relief that could involve the provision of other non-residential services from DCF in order for Student to receive a FAPE. Further, joining DCF fosters administrative efficiency. Parent also challenges whether DCF’s regulations, in fact, limit residential funding to children who are only in its “care” or “custody”[[6]](#footnote-6). Finally, as to the *DMH Motion*, Parent contends that DMH is also a necessary Party, and she has shown “at least in a preliminary way” that DMH could be responsible to offer some services. According to Parent, consistent with DMH’s regulations, it is possible that, after a hearing, the BSEA could determine Student requires residential services for non-educational reasons. In such a case, the Hearing Officer could make residential placement orders to DMH for non-educational reasons, or on an emergency short-term basis, or otherwise find DMH auxiliary services are needed. Since any such Orders are beyond the responsibility of the District, it “would be impossible to grant full relief in DMH’s absence”.

**LEGAL STANDARDS**

I. Motions to Dismiss

Rule XVI(B)(1) and (4) of the *Hearing Rules for Special Education Appeals*and 801 CMR 1.01(7)(g)(3), allows for dismissal of a hearing request if the BSEA lacks jurisdiction over a claim or if a party requesting the hearing fails to state a claim upon which relief can be granted[[7]](#footnote-7). To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief…”[[8]](#footnote-8).  The hearing officer must take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff’s favor”[[9]](#footnote-9).  “Factual allegations must be enough to raise a right to relief above the speculative level... [based] on the assumption that all the allegations in the [hearing request] (even if doubtful in fact) ....”[[10]](#footnote-10).

II. Jurisdiction of BSEA Generally and Over Settlement Agreements

20 USC §1415(b)(6) grants parties the right to file timely complaints with the designated state educational agency “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”[[11]](#footnote-11). However, every alleged wrong imposed on an IDEA or 504-eligible student is not necessarily actionable at the BSEA[[12]](#footnote-12). The BSEA’s jurisdiction over disputes in which the Parties have previously executed a binding settlement agreement is one such area of limitation.

Under 20 USC 1415(e)(2)(F)(iii) and (f)(1)(B)(iii)(II), settlement agreements reached as a result of mediations or resolution sessions are “enforceable in any State court of competent jurisdiction or in a district court of the United States”. While settlement agreements reached outside these two procedures are not explicitly addressed in the IDEA, the BSEA has consistently analyzed and treated all settlement agreements in the same way, regardless of the process under which they were created[[13]](#footnote-13). Although BSEA Hearing Officers have the “authority and responsibility to consider [a settlement] agreement and determine whether and to what extent the [settlement] agreement alters the rights and responsibilities of the parties with respect to [a s]tudent’s special education services and related procedural protections[[14]](#footnote-14), the BSEA has also historically declined to take jurisdiction over issues of interpretation or enforcement of settlement agreement terms, as it lacks “subject matter jurisdiction over contract law disputes, cannot grant relief under contract law claims, and has no particular expertise in interpreting and applying contract law”[[15]](#footnote-15). Further, despite the First Circuit’s recognition and clear acknowledgment of the potential preclusive effect of settlement agreements on subsequently filed disputes between parties to such agreements, no Massachusetts federal or state Court has addressed whether, or to what extent, administrative hearing officers, rather than the Courts have jurisdiction to interpret them[[16]](#footnote-16).

According to the First Circuit’s holding in *South Kingstown Sch. Comm. v. Joanna S.*, settlement agreements will “… release any right to additional [services] that [a student] may have had, except when [the] request … arises from a change in the conditions that prevailed at the time [the parties] signed the [a]greement”[[17]](#footnote-17). *S. Kingstown* involved requests for ten new evaluations made less than six months after the District’s performance of four evaluations agreed to pursuant to a settlement agreement that contained a release of claims that were known or should have been known through the date of that agreement[[18]](#footnote-18). Reasoning that “consent would be meaningless if [the parent] could nonetheless turn around the next day and demand the foregone [terms] anew”, the Court acknowledged that “[w]e cannot accept [this] reading of the [settlement a]greement, as we find it difficult to suppose the parties intended such a meaningless outcome of their negotiations” [[19]](#footnote-19). Adopting a “change in conditions” standard, explained the Court, “reflects both the role settlements may play in resolving IDEA disputes and the legitimate concern with allowing IDEA settlements to bargain away—potentially for all time and without regard to the change in conditions that may arise in the course of a child's development—the statutory right to a [FAPE]”[[20]](#footnote-20).

III. Joinder

In the instant matter Parent filed her *Hearing Request* *ab initio* naming as parties both DMH and DCF, and those parties now seek dismissal. The same legal analysis that pertains to joinder is applicable in considering such dismissal motions. 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.”

In order for the BSEA to order a State agency to offer services, the student must be eligible to receive the services from that agency. Under Mass. Gen. Laws c. 71B, § 3:

"The [BSEA] hearing officer may determine, in accordance with the rules, regulations and policies of the respective agencies, that services shall be provided by … any other state agency or program, in addition to the program and related services to be provided by the school committee”[[21]](#footnote-21).

The ”in addition to” language within the statute has been consistently interpreted by the BSEA to mean that if there are services that the human service agency provides in accordance with its rules and policies that 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[[22]](#footnote-22).

With these statutory and procedural dictates in mind, I consider the *Motions.*

**APPLICATION OF LEGAL STANDARDS**

As my conclusion with respect to the *District Motion* is outcome-determinative, I address it first.

The District contends that the *Settlement Agreement* mandates dismissal of this matter as the District has indisputably complied with its obligations, and the terms of the *Settlement Agreement* make clear that such compliance by the District will “fulfill the District’s substantive and procedural obligations to provide an appropriate public education to the Student” through August 2026. The District suggests that this dispute is ultimately one about interpretation of the “unanticipated and catastrophic illness or injury” provisions of the agreement, which must be decided in the appropriate state or federal court rather than at the BSEA. According to the District, nothing alleged in the *Hearing Request* amounts to an unknown, unanticipated or change in Student’s circumstances that would otherwise justify further consideration of the appropriate educational placement for Student at this time.

However, considering Parent’s claims in the light most favorable to her, and drawing all inferences therefrom in her favor, as I am obligated to do in the context of a motion to dismiss, I do not agree[[23]](#footnote-23). Parent’s *Hearing Request* seeks a determination as to what currently constitutes a FAPE for Student[[24]](#footnote-24); a question that is wholly within the jurisdiction of the BSEA. It sets forth sufficient allegations that, if taken as true, with all inferences drawn in Parent’s favor, indicates a “change in conditions” regarding Student since Parent executed the *Settlement Agreement[[25]](#footnote-25)*. Like *S. Kingston*, the release language in the *Settlement Agreement* addressed all claims, known and unknown, through the date of its execution[[26]](#footnote-26). While Parent would not have been able to challenge Student’s placement based upon circumstances pre-dating the May 2024 execution of the *Settlement Agreement*, her allegations of Student’s “change in conditions” involve circumstances after that date, beginning in or around the fall of 2024[[27]](#footnote-27). These allegations are sufficient, at this stage, to allow the matter to proceed[[28]](#footnote-28), and, at the very least, require further development at a hearing to understand the extent, if any, of Student’s “change in conditions” [[29]](#footnote-29).

Having therefore concluded that Parent’s *Hearing Request* is not precluded by the *Settlement Agreement* and that a hearing is needed to determine both the extent, if any, of Student’s change in circumstances and the special education and related services and placement occasioned thereby in order for Student to receive a FAPE, I now turn to the requests by DCF and DMH to be dismissed as Parties.

DCF contends it is premature to be included as a party as DCF regulations only require that it provide residential placements for children in its care and custody, and it does not currently have care or custody of Student. I concur with my sister Hearing Officers, however, that a “care or custody” arrangement with DCF is not necessary for joinder of DCF, particularly where, as in the instant matter, DCF has a long involved history with the family, and currently has an open clinical case that includes a goal of supporting Parent and Student in accessing available DMH services and ensuring “… safety in the home and managing the student’s mental health and behavioral needs”[[30]](#footnote-30). And it is precisely Student’s mental health and behavioral needs that are at issue in this matter.

Similarly, DMH argues that it is unable to provide the relief Parent seeks as its CYF Residential Intervention Policy prohibits it from being ordered to “cost-share a private residential school placement” since that Policy only authorizes DMH to provide residential services on a “short-term basis”, so it is unable to provide the relief Parent seeks. However, consistent with my previous conclusions in *In Re: Quabbin & DMH & DDS*[[31]](#footnote-31), I do not find this Policy to necessarily so limit DMH. Since the Policy has not been amended since my *Ruling* in *Quabbin*, *et. al.* and given DMH’s acknowledgement that due to Student’s clinical needs it has been providing atypical respite care services to him since December 2024, I find that DMH is a necessary party to this proceeding[[32]](#footnote-32).

Finally, all factors that are to be considered for joinder support both DCF and DMH remaining as Parties[[33]](#footnote-33). As explained above, the BSEA is the appropriate forum to resolve the issues in Parent’s *Hearing Request*[[34]](#footnote-34) and dismissing DCF or DMH as a party could prejudice both Parent and the District. Both DCF and DMH acknowledge their pre-existing and ongoing support of Student’s mental health, behavioral and clinical needs. Dismissing either as Parties in a matter where evidence and testimony will primarily focus on the historical and current mental health and behavioral aspects of Student’s profile, risks loss of critical input that will be essential in determining the underlying issues to be addressed at hearing. Dismissal could also prevent comprehensive relief options that are not possible without the involvement of either agency. Specifically, after a hearing on the merits it is feasible that I could determine that Student does not need residential services for educational reasons or otherwise requires ongoing and/or additional ancillary services from DCF and/or DMH to support him at home or to access his education whether at a day or residential school. I could not, however, order such relief, if I were to dismiss DCF or DMH as a party now.

Having considered the thoughtful arguments of the Parties, in tandem with the legal requirements relating to the preclusive effect of settlement agreements, and the requisite factors for joinder, the *Motions* are **DENIED** and neither the underlying matter nor any of the Parties will be dismissed. Accordingly, the above-referenced matter will proceed in accordance with the *March 7, 2025, Revised Ruling*.

By the Hearing Officer,

/s/ Marguerite M. Mitchell
Marguerite M. Mitchell

Date: April 11, 2025

1. DMH sought and received approval to file its *Motion* on this date as noted in my March 7, 2025, *Ruling on Joint Request to Postpone Hearing and to Hold Hearing Virtually, Revised* (*March 7, 2025, Revised Ruling*). [↑](#footnote-ref-1)
2. Parent sought and received approval to file her *Oppositions* on this date as noted in my March 18, 2025, *Ruling on Joint Request Relating to Pending Motions*. [↑](#footnote-ref-2)
3. Based upon the documents reviewed for this *Ruling*, Student was not hospitalized at all during the 2023-2024 school year. [↑](#footnote-ref-3)
4. No information was provided about the conduct that led to the suspension. [↑](#footnote-ref-4)
5. However, as the District notes, I have previously reviewed this Policy and indicated it may not necessarily preclude DMH from ever providing residential services. *In Re: Quabbin Reg. Sch. Dist. & [DMH] & Dept. of Developmental Services*, BSEA No. 2211285, 28 MSER 189 (Ruling, Mitchell, 2022). [↑](#footnote-ref-5)
6. Specifically, according to Parent, 110 CMR 7.404, the regulation governing cost-share arrangements with a school district, does not include a “care” or “custody” requirement, despite other provisions in DCF’s Special Education Services regulatory scheme, including 110 CMR 7.402 and 110 CMR 7.403(2), expressly stating that they pertain only to “care” or “custody” situations. *Compare* 110 CMR 7.403(1) also failing to include any “care” or “custody” limitation. [↑](#footnote-ref-6)
7. As these rules/regulations are analogous to Rule 12(b)(6) of the Federal and Massachusetts Rules of Civil Procedure (FRCP and MRCP, respectively), hearing officers are generally guided by federal court decisions in deciding such motions. [↑](#footnote-ref-7)
8. *Iannocchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008) quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). [↑](#footnote-ref-8)
9. *Blank v. Chelmsford Ob/Gyn, P.C.*, 420 Mass. 404, 407 (1995). [↑](#footnote-ref-9)
10. *Iannocchino* 451 Mass. at 636 (quoting *Bell Atl. Corp.*, 550 U.S. at 555); see *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 12 (1st Cir. 2011). [↑](#footnote-ref-10)
11. See M.G.L. c. 71B §2A (establishing the BSEA and authorizing it to hear disputes over “…(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 [state or federal special education laws and regulations]; or (ii) a student's rights under Section 504 …, and its regulations”); 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a). [↑](#footnote-ref-11)
12. *Fry v. Napoleon*, 580 US 154, 167-68 (2017) (holding that in situations where a dispute does not involve the IDEA’s FAPE requirement “even though the dispute is between a child with a disability and the school she attends … the hearing officer cannot provide the requested relief. [The hearing officer’s] role, under the IDEA, is to enforce the child’s ‘substantive right’ to a FAPE…. And that is all.” (internal citations omitted). The BSEA does not, for instance, have jurisdiction over class claims, *In Re: Holyoke Pub. Sch. and Jay*, BSEA #1800619, 24 MSER 20 (Ruling, Oliver, 2018); see *In Re: Springfield Pub. Schs.*, BSEA #2203555, 28 MSER 111 (Ruling, Berman, 2022) citing *Globe Newspaper Co. v. Beacon Hill Architectural Comm.*, 421 Mass. 570, 586 (1996); *In Re: Student & Quincy Pub. Sch. and Dept. of Elementary and Secondary Education,* BSEA #2408249, 30 MSER 176 (Ruling, Mitchell, 2024); or to address violations that pertain to a right that is available to all students regardless of their disability status or eligibility under the IDEA, *In Re: Springfield Pub. Schs., et. al.*, BSEA #2309351, 29 MSER 154 (Ruling, Mitchell, 2023). [↑](#footnote-ref-12)
13. See *In Re: Student R. and Lincoln-Sudbury Pub. Sch.*, BSEA #11-2546, 16 MSER 424 (Ruling, Figueroa, 2010) (noting that “[e]ven if Parties agree between themselves that the BSEA will have authority to ‘enforce’ agreements, such language is insufficient to bind the BSEA where it otherwise lacks statutory authority, and enforcement of agreements is not one of the powers specifically granted to BSEA Hearing Officers…”). [↑](#footnote-ref-13)
14. *In Re: Longmeadow Pub. Schs.*, BSEA No. 07-2866, 14 MSER 249 (Ruling, Crane, 2008) (collecting authorities) (internal citations omitted). [↑](#footnote-ref-14)
15. *In Re: Milford Pub. Schs.*, BSEA No. 16-01412, 21 MSER 219 (Ruling, Berman, 2015). [↑](#footnote-ref-15)
16. *S. Kingston.* 773 F.3d 344, n.3 (1st Cir. 2014) (internal citations omitted); *Milford*, 21 MSER 219 (Berman, 2015); see *Alison H. v. Byard*, 163 F.3d 2, 6 (1st Cir. 1998) (concluding a settlement agreement altered the parties’ IDEA rights and responsibilities by extinguishing the parent’s ability to seek attorney fees under the IDEA that they otherwise held); *Michelle K. v. Pentucket Reg'l Sch. Dist.*, 79 F. Supp. 3d 361, 371 (D. Mass. 2015) (remanding to the BSEA to address an ambiguous settlement term so that “the parties have [a] further opportunity to develop the record including whether [they] should be permitted to advance parole evidence regarding their understanding of the settlement agreement”); *In Re: Lexington Pub. Schs.*, BSEA No. 1701925 22 MSER 204 (Ruling, Figueroa, 2016). [↑](#footnote-ref-16)
17. *S. Kingstown*, 773 F.3d at 354; see *D.R. by M.R. v. E. Brunswick Bd. of Educ.*, 109 F.3d 896, 901 (3d Cir. 1997) (holding that a settlement agreement is “binding on the parties” unless there has been a change in circumstances”); see *Jefferson v. Raimondo*, 2018 WL 3873233, at \*12 (D.R.I. Aug. 15, 2018). [↑](#footnote-ref-17)
18. *S. Kingston*, 773 F.3d at 347-48, 354. [↑](#footnote-ref-18)
19. *Id.* at 354 (internal citations omitted)); see *Lexington*, 22 MSER 204 (Figueroa, 2016). [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. MGL c. 71B, §3; see 603 CMR 28.08(3). [↑](#footnote-ref-21)
22. *In Re: Plymouth Pub. Sch.* BSEA No. 06-2584, 12 MSER 33 (Ruling Crane, 2006) (internal citations omitted); *In Re: Fitchburg Pub. Sch.* BSEA No. 02-0038, 8 MSER 141 (Ruling Byrne, 2002). [↑](#footnote-ref-22)
23. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-23)
24. Compare *In Re: Harvard Pub. Schs.* BSEA No. 210881, 27 MSER 386 (Ruling, Kantor Nir 2021) (concluding the terms of a settlement agreement releasing claims prior to its execution but resulting in a student meeting graduation requirements, when there was no dispute as to the student’s receipt of a FAPE during the agreed upon transitional year, precluded further educational obligations by Harvard for the student); *Milford* 21 MSER 219 (Berman, 2015) (dismissing a claim due to a settlement agreement in a matter where the parents “framed their claims as constituting a breach of contract under the doctrines of impossibility and implied covenant of good faith and fair dealing” rather than alleging the student’s “IEP is inappropriate or has not been implemented, or that Milford has denied [s]tudent a FAPE”). [↑](#footnote-ref-24)
25. *S. Kingston*, 773 F.3d at 354. [↑](#footnote-ref-25)
26. Compare *In Re: Andover Pub. Schs.*, BSEA No. 200773, 29 MSER 137 (Ruling, Berman, 2020) (concluding that the dispute as to the interpretation of a settlement agreement whose terms prohibited the parents from seeking public funding for private placements in subsequent school years “except in the event of extraordinary circumstances which substantially and materially change the [s]tudent’s disabling condition or educational needs” must be brought to the courts to assess the “circumstances surrounding the negotiations” of that agreement in a dispute involving Parent’s request for public funding of a placement after the settlement agreement term had expired and where no change in circumstances was at issue); *Lexington*, 22 MSER 204 (Figueroa, 2016) (deferring dismissal to provide Parents a chance to further develop the record by seeking a hearing on the merits as to their understanding of a settlement agreement in a dispute involving a request for reimbursement for subsequent placements based upon a change in circumstances after expiration of a settlement agreement containing broad waiver language covering future placement claims regardless of any change in circumstances). [↑](#footnote-ref-26)
27. *Id.*  [↑](#footnote-ref-27)
28. Numerous questions exist at this stage, that can only be answered at a hearing including to what extent Student’s behavioral dysregulation in school and at home and the residential placement recommendations differ from what existed at the time the *Settlement Agreement* was signed. *Mr. Catling v. York Sch. Dep't*, 2019 WL 3936386, at Ftnt. 3 (D. Me. Aug. 20, 2019), *report and recommendation adopted*, 2019 WL 4455986 (D. Me. Sept. 17, 2019) (declining to dismiss the matter at a motion to dismiss stage but acknowledging that after “development of the record” Plaintiffs may not be able to meet their burden to show that their claims “in fact involve changed circumstances to overcome the bar presented by the prior settlement agreement”); see *J.G. v. Los Angeles Unified Sch. Dist.*, 2023 WL 8125847, at Ftnt 3 (C.D. Cal. July 10, 2023) (finding Plaintiff did not provide evidence of changed circumstances); *Mr. Catling v. York Sch. Dep't*, 2020 WL 6309743, at \*6 (D. Me. Oct. 28, 2020), *report and recommendation adopted*, 2020 WL 7233351 (D. Me. Dec. 8, 2020) (concluding after “a review of the record and the parties' arguments” that the alleged “new” information “[did] not constitute changed conditions” until the Team determined additional services were warranted based upon a post-settlement agreement review of a speech and language evaluation). [↑](#footnote-ref-28)
29. *S. Kingston*, 773 F.3d at 355 (examining on “any changes in [the student]’s behavioral presentations that occurred after the settlement”); see *Mr. Catling* 2020 WL at \*6 (considering evaluation recommendations that the district did not have at the time of the settlement agreement’s execution). I also agree with Parent’s that since the situation in the instant matter involves significant current health and safety concerns to Student, Parent and others, that have yet to be alleviated, it is substantively different from the circumstances in the cases relied upon by Ashland. See *In Re: Norton Pub. Schs. and Rafael*, BSEA No.1602348, 22 MSER 169 (Ruling, Byrne 2016) (challenging the failure to provide ESY services at home, and seeking relief under laws besides the IDEA, or Section 504); *In Re: Milford*, 21 MSER 219 (Berman, 2015) (seeking unilateral reimbursement for a private placement in a non-FAPE dispute); *In Re: Pentucket Regl. High Sch.*, BSEA No. 12-8636, 19 MSER 84 (Ruling, Figueroa, 2013) (involving claims for prior year services when current placement was not in dispute); *In Re: Lincoln-Sudbury Pub. Schs.* BSEA No. 11-2546, 16 MSER 424 (Ruling, Figueroa, 2010) (seeking compensatory services and reimbursement for tutoring costs for prior years); *In Re: Masconomet Regl. Sch. Dist. and Jake*, BSEA No.11-2194, 16 MSER 408 (Ruling, Oliver, 2010) (involving a dispute over the appropriateness of a proposed IEP) *In Re: Longmeadow Sch. Dist.*, BSEA No.07-2866, 14 MSER 249 (Ruling, Crane, 2008) (about the binding effect of a handwritten agreement at a Settlement Conference involving requests for compensatory speech and language services and reimbursement). [↑](#footnote-ref-29)
30. *In Re: Boston Pub. Schs.*, BSEA No. 2303331, 28 MSER 309 (Ruling, Kantor Nir, 2022); *In Re: Yakov v. Lynn Pub. Schs.*, BSEA No. 2205881, 28 MSER 104 (Ruling, Reichbach, 2022); *In Re: North Middlesex Regl. Sch. Dist.*, BSEA No. 1612096, 22 MSER 156 (Ruling, Figueroa, 2016). [↑](#footnote-ref-30)
31. *In Re: Quabbin*, BSEA No. 2211285, (reviewing the same argument by DMH as to its CYF Residential Intervention Policy, referred to as DMH Policy 19-02 in that matter). [↑](#footnote-ref-31)
32. See *Plymouth* 12 MSER 33 (Ruling Crane, 2006), (reasoning that DMH’s joinder was warranted, in part due to “… 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 [a] determination of Student's needs and how they should be met…”); *Fitchburg*, 8 MSER 141(Byrne, 2002). [↑](#footnote-ref-32)
33. Notwithstanding my prior conclusions that DMH’s Policy’s “short-term basis” requirement may not preclude ordering DMH to provide residential placement relief to a student in some instances, or Parent’s argument that DCF’s regulations do not, in fact, limit DCF to providing residential placement only if it has “care” or “custody” of a child, a final determination as to whether I can or should order residential placement relief from either agency can only be made after a hearing on the merits. At that time, however, I cannot order any relief that is contrary to the rules, regulations or policies of DCF or DMH. MGL. c. 71B § 3. [↑](#footnote-ref-33)
34. 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-34)