**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student & Boston Public Schools BSEA # 2509839**

**RULING ON BOSTON PUBLIC SCHOOLS’ MOTION TO JOIN**

**THE MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH**

This matter comes before the Hearing Officer on the Boston Public Schools’ (District) May 8, 2025 *Motion to Join the Massachusetts Department of Mental Health (Motion)* seeking joinder of the Massachusetts Department of Mental Health (DMH) as a necessary party to a matter pending before the Bureau of Special Education Appeals (BSEA) in accordance with Rule I(J) of the BSEA’s *Hearing Rules for Special Education Appeals (Rules)*. On May 13, 2025, DMH filed its *Opposition to Motion to Join* (*Opposition*). On May 20, 2025, with the Hearing Officer’s permission, the District filed its *Reply to [DMH’s] Opposition to Motion to Join* (*Reply*). Further, on July 7, 2025, pursuant to a June 26, 2025 *Order*, the District and Student[[1]](#footnote-1) filed status reports, wherein Student advised that he takes no position on the *Motion*. For the reasons articulated below, the District’s *Motion* is **DENIED without prejudice** and DMH is not joined as a party at this time.

# **FACTS**[[2]](#footnote-2)

1. Student is 16 years old. He is eligible for special education services under the Emotional disability category based upon his diagnoses of Emotional-Social Disorder, Post-Traumatic Stress Disorder, Attention Deficit Hyperactivity Disorder, and Disruptive Mood Dysregulation Disorder[[3]](#footnote-3). Neither his diagnoses nor eligibility are in dispute. (*Hearing Request*; *Motion*).
2. Student previously received services from DMH between December 2016 and September 2018 while he was attending a residential school placement at the Brandon School and Residential Treatment Center (Brandon). Student experienced academic, emotional and behavioral success at Brandon. Due to this success and the COVID-19 pandemic, Student began attending Brandon as a day student in March 2020, returning to live at home with his older sister (Caregiver)[[4]](#footnote-4) and older brother. In September 2023, based upon further progress, he began attending a collaborative school program. (*Hearing Request*; *Motion*).
3. Despite initial progress at the collaborative program, Student increasingly struggled socially, emotionally, academically and behaviorally during his attendance, culminating in an inappropriate interaction with a female student he considered to be a girlfriend at the end of the 2023-2024 school year. Student had initially made a suicide pact with this student, and Student’s inappropriate behavior occurred when she changed her mind. (*Hearing Request*).
4. Shortly thereafter, a search of Student’s laptop revealed his substantial involvement in an on-line “racist group chat, where [Student] and others described Student as a ‘slave’ to be used by them and encouraged Student to self-harm”. Student’s access to technology was limited following this search. Student then became increasingly agitated and expressed suicidal and homicidal ideations towards his siblings before eloping from home on July 1, 2024. Upon being located by police “lying in a graveyard”, Student was hospitalized at his request. (*Hearing Request*).
5. Student spent the summer of 2024 in various levels of hospitalizations, completing a partial hospitalization program on September 2, 2024. Student did not return to school at his collaborative placement with the start of the school year as he was awaiting a requested re-entry meeting. (*Hearing Request*).
6. On December 17, 2024, Caregiver consented to a three-year re-evaluation for Student that the District has proposed on November 8, 2024, however testing was not able to be conducted then as Student was receiving interim virtual tutoring while the parties searched for a new day program. (*Hearing Request*).
7. In February 2025, Student began attending a private therapeutic day program. Within a few weeks he engaged in an inappropriate physical way with a female student prior to a school field trip. As a consequence, Student’s electronics were confiscated. Three days later, on February 21, 2025, Student eloped from home to live with an unknown female he had met on the internet. He refused to answer calls from his family. Student did talk to the Director of his day program, and agreed to meet with him and speak with a school counselor, whereupon he made further “significant homicidal threats against his older sister and older brother,” resulting in another in-patient hospitalization. (*Hearing Request*).
8. Between the hospitalization on February 21, 2025, and the end of May 2025, Student remained in various in-patient hospital placements (at one point stepping down to a Community-Based Acute Treatment (CBAT) program, but being re-hospitalized shortly thereafter due to making threatening statements). (*Hearing Request*; *Motion*; *Reply*).
9. During this time, Caregiver filed an application for Student to receive DMH services. On April 28, 2025, DMH advised that it had,

“determined [Student] to meet the [Child, Youth and Family] CYF clinical criteria. However, the application process for DMH has two steps; the first is a review of clinical eligibility and the second is a review of service needs. In review of [Student’s] service needs it was determined that he does not have a current need for a DMH CYF service.” (*DMH Determination*)

The *DMH Determination* advised that an appeal could be filed within ten working days. No appeal was filed. (*Motion*; *Opposition*; *Reply*; *Student status report*).

1. On May 28, 2025, Student transferred to Brandon’s residential program to begin a District-funded extended three-year re-evaluation that is expected to conclude in mid-September 2025, whereupon a Team meeting will be held to develop an IEP and propose a placement. The Parties are working to schedule a mid-point meeting. Student transferred to Brandon directly from the hospital given the safety concerns that continue to exist for Student and his siblings if he were to return home. (*Motion*; *Reply*; *District status report*; *Student status report*).
2. As of July 7, 2025, no new application or re-application for DMH services has been filed. (*Student status report*).
3. Student’s “stay put” placement remains the therapeutic day program he began attending in February 2025. (*Motion*; *Reply*; *District status report*).

# POSITION OF THE DISTRICT

The District contends DMH is a necessary party consistent with the provisions of *Rule I(J)*. Specifically, the District asserts that if, after a hearing on the merits, it is determined that Student does not require a residential placement for educational reasons, DMH may be responsible for providing Student additional services and supports “up to and including residential placement” in order to receive a free appropriate public education (FAPE) in a day school program. Moreover, DMH may be responsible for providing interim services to Student pending a hearing on the merits to support him as he continues to receive his “stay put” day school program. The District also contends that the failure to appeal the *DMH Determination* of Student’s clinical eligibility but lack of need for services is of no consequence to the joinder request, as the *DMH Determination* failed to provide all information required by DMH’s regulations (104 CMR 29.04(5)(e)). Finally, the District asserts the BSEA has authority to join DMH in the instant matter as DMH’s regulations (104 CMR 29.04(5)(f)) provide that when denial is based on a failure to demonstrate a need for DMH services, despite a finding of clinical eligibility, the presumption of clinical eligibility remains in place for the 12 months subsequent to such a denial, and a reapplication can be made due to a “change in circumstances” within this timeframe. Thus, a grant of joinder “… in advance” of such a likely request for “reconsideration” ensures that complete relief is available, “in concert with DMH regulations”.

# POSITION OF DMH

DMH submits that the *DMH Determination* is final and binding as it was not appealed, thus the BSEA lacks any authority to join DMH as a party in this matter. Pursuant to M.G.L. c. 71B §3, the BSEA can only order services from DMH “in accordance with the rules, regulations and policies of the respective agenc[y] … in addition to the program and related services to be provided by the school committee”. The *DMH Determination* was made in accordance with DMH’s regulations, specifically 104 CMR 29.04 (2) through (4), and no application for services is currently pending. The BSEA process cannot and should not be used to challenge the *DMH Determination* once the appeal period has run without an appeal being filed, and the BSEA cannot order DMH to provide services to a student in situations where DMH has determined that the student is not eligible for receipt of any DMH services. Joinder is not required for the Parties to seek discovery of information in the possession of DMH or its vendors, thus there is no risk of prejudice to the Parties without DMH’s joinder.

# **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 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”[[5]](#footnote-5).

M.G.L. c. 71B §3 provides, in relevant part, that,

"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 health, …, in addition to the program and related services to be provided by the school committee”[[6]](#footnote-6).

For a State agency to be ordered to offer services, however, the student must, as a preliminary matter, be eligible to receive those services from that state agency[[7]](#footnote-7).

# APPLICATION OF LEGAL STANDARD

The District seeks joinder of DMH, a state agency, in a matter involving a dispute with respect to Student’s placement – specifically, whether Student requires a residential educational program to receive a FAPE. It is undisputed that: (1) Student was found to meet the clinical criteria for DMH services under 104 CMR 29.04(3) on April 28, 2025; (2) at the same time, was found not to need DMH services under 104 CMR 29.04(4) and (5); and (3) that this determination has not been appealed. Further, Student has not reapplied[[8]](#footnote-8) for DMH services based upon a change of circumstances under 104 CMR 29.04(5)(f). Thus, I must first determine whether a final finding of clinical eligibility, albeit in the context of a lack of a need for services meets the standard for joinder of DMH. Only if I determine that I maintain authority to join DMH in these circumstances, can I then consider whether joinder is warranted under *Hearing Rule I(J)*.

I therefore examine the DMH regulatory scheme pertaining to application for DMH services, set forth in 104 CMR 29.00. I note at the outset that “client” is defined in 104 CMR 29.02 to be “an individual for whom DMH services have been authorized and who is enrolled in a DMH service”. It is also clear from the regulations that the determination that an applicant “meets clinical criteria” is distinct from a determination that an applicant “needs DMH services”. Not only is each determination addressed through separate subsections (i.e., 104 CMR 29.04(3) addresses the clinical criteria requirement, while 104 CMR 29.04(4) and (5) address the need for DMH services requirement), but according to the “General Provisions” section of the regulations, 104 CMR 29.03(2), they are separate and distinct requirements, and an applicant must meet both to be “authorized to receive a DMH service”[[9]](#footnote-9).

Each requirement is also reviewed at different times in the overall timeline DMH must follow to respond to a completed application[[10]](#footnote-10). According to 104 CMR 29.04(1)(f)(3), initially, a determination must be made within 20 business days of receipt of the completed application that an applicant “meets clinical criteria set forth in 104 CMR 29.04(3)”. Then, 104 CMR 29.04(1)(f)(5) provides that DMH has an additional 20 business days from that initial determination to determine that an applicant “needs DMH services as set forth in 104 CMR 29.04(4)”. Additionally, the regulations explicitly require that upon a determination that an applicant meets clinical criteria, the next step is to make a determination of need for DMH services[[11]](#footnote-11). Finally, separate appeal rights attach to each criterion upon a denial, with denials based on clinical criteria being governed by 104 CMR 29.16(3)[[12]](#footnote-12), while denials based on need for DMH services are governed by 104 CMR 29.16(4)[[13]](#footnote-13).

The District relies on 104 CMR 29.04(5)(f) to support its argument that joinder is warranted when DMH has determined an applicant meets clinical criteria but does not need DMH services, as meeting clinical criteria is sufficient to bring a student under the rules, regulations and policies of DMH[[14]](#footnote-14). However, this provision falls under the regulatory subsection relating to denials due to not needing DMH services, not the subsection for denials due to not meeting clinical criteria[[15]](#footnote-15). Thus, I do not find that provision provides regulatory authority to support joinder of DMH.

The District also points to several BSEA cases in support of its request for joinder, but I do not find these cases support the District’s assertion in the instant matter. Two cases involved students where eligibility was not in dispute[[16]](#footnote-16), one case involved a student who had a pending application for DMH services[[17]](#footnote-17), and the last case involved a student who had a pending appeal of a determination that she did not meet clinical criteria[[18]](#footnote-18). Further, while the District contends all three cases relied upon by DMH[[19]](#footnote-19) are inapplicable as they involved determinations that students did not meet clinical criteria, in fact, *In Re: Nashoba Regional School District* pertained to a determination that the student in that matter did not need DMH services, a determination which had not been appealed prior to issuance of that *Ruling*[[20]](#footnote-20). Thus, I conclude that DMH cannot be joined where, as in the instant matter, it has made an un-appealed determination that an applicant does not need DMH services despite having decided he meets clinical criteria. The DMH regulatory scheme as a whole provides me with no authority to join DMH in such circumstances as Student cannot be considered a current “client” of or otherwise eligible for services from, DMH.

I am sympathetic to and share the District’s concerns that a realistic possibility exists, given that Student’s “stay put” rights are only to a day placement, that he could return home without necessary agency supports in place to address safety concerns, prior to the issuance of a decision in this matter, however I am constrained by DMH’s regulatory provisions. Should such circumstances develop, though, Student is not without recourse, as he can reapply for DMH services at that time, and likely will be within the 12-month window where he is presumed to still meet clinical criteria, thus by-passing the initial 20 business day determination timeframe[[21]](#footnote-21). Upon filing such a reapplication, joinder of DMH is no longer precluded by its regulations, particularly given DMH’s determination that Student meets clinical criteria, and at such a time, therefore, either or both Parties may file a new request to join DMH[[22]](#footnote-22).

For these reasons, the District’s *Motion* is **DENIED without prejudice**. Accordingly, the matter will proceed with only Student and the District as parties herein. Joinder of DMH can be sought again if a re-application for DMH services is filed.

By the Hearing Officer,

/s/ Marguerite M. Mitchell
Marguerite M. Mitchell

Date: July 11, 2025

1. Student’s status report was filed by Counsel for his Caregiver (his biological older sister with whom Student resides) who filed the initial *Hearing Request* in this matter on March 14, 2025. For purposes of this *Ruling*, I refer to the Caregiver’s arguments as those of “Student”. [↑](#footnote-ref-1)
2. The facts stated herein are considered true solely for the purposes of this *Ruling*. [↑](#footnote-ref-2)
3. ##  Student was also diagnosed with Major Depressive Disorder, and Complex Post-Traumatic Stress Disorder based on an in-patient evaluation at Cambridge Health Alliance on July 11, 2024. In addition, his most recent neuropsychiatric evaluation conducted during an in-patient hospitalization in the spring of 2025 noted Student’s “… personality is cluster B with borderline, narcissism, some histrionic with a lot of emotional numbing and callousness”. (*Hearing Request*; *Motion*).

 [↑](#footnote-ref-3)
4. According to the *Hearing Request*, Caregiver has had educational decision-making authority for Student for several years, as she signed and accepted IEPs for him as far back as January of 2023. [↑](#footnote-ref-4)
5. See M.G.L. c. 71B §2A. [↑](#footnote-ref-5)
6. MGL c. 71B, §3; see 603 CMR 28.08(3). [↑](#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. Although the District refers to this as “reconsideration”, the regulation uses the language “reapplies”. 104 CMR 29.04(5)(f) (“If an individual whose application was denied because of a determination that the individual did not need DMH services *reapplies* due to a change in circumstances within 12 months of such denial …” (emphasis added).) The term “reconsideration” is only used once in the regulatory scheme pertaining to situations involving appeals of denials where an applicant does not meet clinical criteria, which is not relevant to the instant matter. See 104 CMR 29.16(3). Filing a “reapplication”, however, means that the student must comply with the provisions of 104 CMR 29.04 relating to applications for DMH services, except as otherwise modified by subsection (5)(f). See 104 CMR 29.04(1)(g) (providing, in relevant part, that “the Department may redetermine whether a client continues to meet the criteria for DMH Services pursuant to 104 CMR 29.04(3) and (4) annually; when a client's circumstances have changed …”). [↑](#footnote-ref-8)
9. According to 104 CMR 29.03(2) there are three prerequisites for authorization to receive a DMH service: being domiciled in Massachusetts; “meet[ing] the clinical criteria” of 104 CMR 29.04(3); “*and*” being “determined to need a DMH service” under 104 CMR 29.04(4) (emphasis added). [↑](#footnote-ref-9)
10. The regulations allow all timelines to be extended for “good cause”. 104 CMR 29.04(1)(f)(6). [↑](#footnote-ref-10)
11. “If an individual is found to meet the clinical criteria for DMH services as set forth in 104 CMR 29.04(3), *then* [DMH] shall determine whether the individual needsDMH services as provided in 104 CMR 29.04(4)” (emphasis added). 104 CMR 29.04(3)(f)(1). [↑](#footnote-ref-11)
12. 104 CMR 29.04(3)(f)(2)(b). [↑](#footnote-ref-12)
13. 104 CMR 29.04(5)(e)(2). [↑](#footnote-ref-13)
14. 104 CMR 29.04(5)(f) provides that a reapplication due to a change in circumstances within 12 months of denial of an application based only on a determination that an application does not need DMH services will involve a continued presumption that the applicant continues to meet clinical criteria. [↑](#footnote-ref-14)
15. The District also contends that the *DMH Determination* failed to comply with the regulatory requirements to inform Student of the reasons for its denial and the community services that may be available to meet his needs. Although this failure may have been a basis to appeal the denial, no such appeal was filed. As I have no authority to enforce DMH’s regulations, but rather am limited by them, I do not find this argument persuasive, either. [↑](#footnote-ref-15)
16. *In Re: Norwood Pub. Schs., et. al.*, BSEA No. 1710189, 23 MSER 169 (Reichbach, 2017) (student eligible for DCF services); *In Re: Arlington Pub. Schs. and Wanda*, BSEA No. 1700442, 22 MSER 221(Reichbach, 2016) (student eligible for DDS services). [↑](#footnote-ref-16)
17. *In Re: Westford Pub. Schs., et. al.*, BSEA No. 1607922, 22 MSER 77 (Reichbach, 2016) [↑](#footnote-ref-17)
18. *In Re: Georgetown Pub. Schs. et. al.*, BSEA No. 1500020 (Ruling, 2014) [↑](#footnote-ref-18)
19. Namely *In Re: Boston Pub. Schs. et. al.*, BSEA No. 1707097 23 MSER 59 (Berman, 2017); *In Re: Northampton Pub. Schs.*, BSEA No. 2006485, 26 MSER 73 (Figueroa, 2020); and *In Re: Nashoba Reg. Sch. Dist.*, BSEA No. 2306061, 29 MSER 52 (Mitchell, 2023). [↑](#footnote-ref-19)
20. *In Re: Nashoba*, BSEA No. 2306061. However, the argument presented by the District here (i.e., that joinder is not precluded when there has been a denial for reasons of lack of a need for DMH services, despite a finding of meeting clinical criteria), was not raised in that matter. [↑](#footnote-ref-20)
21. Moreover, while an application is “pending” an applicant could be found to be in need of “short term services” and authorized to receive them. 104 CMR 29.04(1)(h). [↑](#footnote-ref-21)
22. See also *In Re: Westford*, BSEA No. 1607922 (holding that as the student’s “application is pending, and he may be found eligible for DMH services … remaining a party to this matter is not inconsistent with DMH regulations …”). [↑](#footnote-ref-22)