**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student & Boston Public Schools BSEA # 2512021**

**RULING ON STUDENT’S MOTION TO JOIN**

**DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

This matter comes before the Hearing Officer on Student’s June 16, 2025 *Motion to Join Department of Elementary and Secondary Education (Motion)*. Student[[1]](#footnote-1) seeks joinder of the Department of Elementary and Secondary Education (DESE) 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, Student contends that DESE has failed to ensure that Student, while in the custody of the Department of Youth Services (DYS) during the time period at issue in the instant matter, has been provided with a free appropriate public education (FAPE) and his agreed-upon educational services there.

For the reasons articulated below, the District’s *Motion* is **ALLOWED** **in part[[2]](#footnote-2)**.

**RELEVANT PROCEDURAL HISTORY**

On April 29, 2025, Parent filed a *Hearing Request* against the Boston Public School District (District) challenging an IEP proposed in November 2024 and seeking both compensatory and prospective services and prospective placement in a therapeutic educational setting. The compensatory claims were retroactive to October of 2023[[3]](#footnote-3).

With the agreement of the Parties and the Hearing Officer, the District filed its response on May 16, 2025, advising that the issue of prospective placement was now moot, based upon the Team decision at a meeting held on April 30, 2025, to place student in a therapeutic day school and denying the remaining allegations in the *Hearing Request*.

Both the *Hearing Request* and the *Response* noted that Student was confined to DYS during some of the 2024-2025 school year, during which time he received some services via the Special Education in Institutional Settings (SEIS) program operated by DESE. On May 19, 2025, during the initial Conference Call the Parties advised that Student had recently been re-confined to DYS. He currently remains in DYS custody.

On June 16, 2025, Student filed the *Motion* seeking to join DESE as a party to this matter. Student claims DESE is responsible not only for the provision of agreed-upon special education and related services through SEIS pursuant to M.G.L. c. 71B §12 and 603 CMR 28.06(9), but also that it has overall supervisory responsibility under federal law (specifically 20 USC 1412 (a)(1)(A) and (a)(12); 35 CFR 300.2 (b)(1)(iv) and 300.154) “for ensuring continued access to FAPE for youth in institutional settings within DESE”.

On July 7, 2025, the District advised that it agrees and supports the *Motion* to join DESE “insofar as they may have some responsibility for the student’s services during the time that he has been in the custody of DYS”.

By agreement of the Parties and DESE, on July 9, 2025, DESE filed a *Response to the Motion to Join and Partial Motion to Dismiss* (*Response*), advising it does not object to being joined as a Party with regard to any claims relating to providing Student with SEIS services while he has been and continues to be in DYS custody (i.e., claims under M.G.L. c. 71B §12 and 603 CMR 28.06(9)), although it denies all such claims. Further, DESE seeks dismissal of claims in the *Motion* pertaining to its general supervisory authority to ensure a FAPE is provided to students in institutional settings under 20 USC 1412 (a)(1)(A) and (a)(12); 35 CFR 300.2 (b)(1)(iv) and 300.154[[4]](#footnote-4).

**RELEVANT FACTS[[5]](#footnote-5)**

1. Student is 13 years old and is eligible for special education under the disability categories of communication impairment, specific learning disabilities in reading, writing and math, emotional impairment and health impairment (ADHD). (*Hearing Request; Memorandum in Support of Motion).*
2. Between November 2024 and July 2025, Student has spent over 60 days in DYS custody at the facilities of Carbone Hall in Framingham (Carbone)[[6]](#footnote-6) and Metro in Boston (Metro). Student is currently in DYS custody at Metro. (*Memorandum in Support of Motion*).
3. Between November 2024 and June 12, 2025, Student’s accepted IEP called for the following C-Grid services: 5 x 69 minutes/week (m/w) each of Math, ELA, Self-Regulation, and Executive Instruction, all with a special educator; and 1 x 30 m/w of Counseling with a counselor. On April 28, 2025, Parent accepted an additional C-Grid service of “rules-based reading instruction” 4 x 30 m/w with a special educator. (*Student Memorandum in Support of Motion*).
4. While at Carbone, a special education teacher from SEIS provided Student with support two hours per week, and he received all other instruction from a general education teacher. The District did not provide any additional special education services or support there. (*Memorandum in Support of Motion*).
5. While at Metro, a special education teacher from SEIS has and continues to provide Student with support one to two hours per week and he receives all other instruction from a general education teacher. The District has never provided any special education services or support there. (*Memorandum in Support of Motion*).
6. On June 12, 2025, Parent accepted a new IEP placing Student in a therapeutic day school program with A-Grid monthly consultation by a speech and language pathologist (SLP) and a counselor and the following C-Grid services: 5 x 60 m/w of Reading/Writing, Math Skills, Self-Regulation Skills, and Executive Functioning Skills with a special educator; 4 x 45 m/w of rules-based Reading with a special educator; 1 x 45 m/w of speech and language services with an SLP or SLP Assistant; and 1 x 30 m/w of Counseling. (*Memorandum in Support of Motion*).

**LEGAL STANDARDS**

A. Joinder of a State Agency

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.”

Pursuant to M.G.L. c. 71B, §3, the BSEA may order a State agency to offer services, if the Hearing Officer determines, "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”[[7]](#footnote-7).

*B. Jurisdiction of BSEA.*

Unlike a court with general jurisdiction, the BSEA may consider only those claims for which enabling statutes and regulations expressly grant authority”[[8]](#footnote-8). The IDEA grants parties the right to file timely complaints (within a two-year statute of limitations[[9]](#footnote-9)) “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”[[10]](#footnote-10). Similarly, M.G.L. c. 71B §2A, establishing the BSEA, authorizes it to resolve special education disputes 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 [IDEA], 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”[[11]](#footnote-11).

B. DESE as a Party In Matters Involving Students in DYS Custody

While DESE may, in certain circumstances, be an appropriate party to a BSEA due process proceeding, something more than its general supervisory authority obligations[[12]](#footnote-12) must be involved to support a grant of party status.[[13]](#footnote-13) For an SEA[[14]](#footnote-14) to be liable for denials of FAPE, specific actions or inactions by the SEA must have contributed to or caused such a denial[[15]](#footnote-15).

Under federal and state special education laws and regulations, special education eligible students with disabilities who are incarcerated in juvenile detention facilities, such as DYS, maintain their right to a FAPE and are entitled to receive special education services from both DESE and local school districts, among other entities, while in DYS custody [[16]](#footnote-16). Specifically, DESE “*shall* provide certain special education services to eligible students in certain facilities operated by or under contract with the … the Department of Youth Services …” (emphasis added), however,

“where a student's IEP requires a type or amount of service that the facility does not provide, it shall remain the responsibility of the school district where the [Parent] resides, [with exceptions not relevant to the instant matter], to implement the student's IEP by arranging and paying for the provision of such services”[[17]](#footnote-17).

It is within the context of these statutory and procedural dictates that I consider the instant *Motion.*

**APPLICATION OF LEGAL STANDARDS**

Parent seeks to join DESE in a matter involving a dispute over whether Student is owed compensatory services for failure to be provided with a FAPE since October 2023, an issue squarely within the BSEA’s jurisdiction. It is undisputed that during some of this time Student was in the custody of DYS, receiving educational services from SEIS, a program run by DESE. Although DESE denies responsibility for any FAPE violations Student may be found to have experienced during his confinement, it does not contest that it is a necessary party pursuant to M.G.L. c. 71B §12 and 603 CMR 28.06(9).

DESE disputes though joinder pursuant to its general supervisory obligations under the IDEA. It is not necessary for me to address this distinction in the instant matter, as joinder under M.G.L. c. 71B §12 and 603 CMR 28.09(9) will be sufficient to address the claims relevant to DESE raised in the *Hearing Request* (i.e., whether Student is owed compensatory services due to being unable to access FAPE while in DYS custody)*[[18]](#footnote-18)*. Further, the statutory and regulatory language under which DESE agrees to be joined clearly establishes its obligations both for providing services and for ensuring the provision of services by other entities with respect to students, including Student, in DYS facilities[[19]](#footnote-19). M.G.L. c. 71B §12 states “[DESE] *shall* establish *and maintain a school department* for school-aged children in each institution under the control of the department[ ] … of youth services …” while 603 CMR 28.06(9) states “[DESE] *shall* provide “certain special education services” (emphasis added).

I also find that all factors to be considered for joinder support joining DESE as a party in this case, pursuant to M.G.L. c. 71B §12 and 603 CMR 28.06(9) [[20]](#footnote-20). Joinder of DESE is essential to reducing the risk of prejudice, ensuring that all options for appropriate relief, not possible without its involvement, are available, and allowing for fair judgment to be made. Having DESE as a party enables options for relief that are not possible without its involvement. Specifically, if, after a hearing on the merits, I determine that Student did not receive a FAPE during any time he was in DYS custody, I would be unable to order comprehensive relief without DESE’s party status. It is also undisputed that the BSEA is not only the appropriate forum but the only forum, to resolve the disputed issues in this matter[[21]](#footnote-21).

Having considered the requisite factors for joinder, in tandem with DESE’s response, which does not oppose the *Motion* with regard to its obligations under M.G.L. c. 71B §12 and 603 CMR 28.06(9) only, and the specific allegations of the *Hearing Request*,the *Motion* is **ALLOWED in part**. DESE is hereby joined as a Party pursuant to M.G.L. c. 71B §12 and 603 CMR 28.06(9), only, with regard to Student’s SEIS-based FAPE claims for those periods of time he has been and will prospectively be in the custody of DYS.

Accordingly, the above-referenced matter will proceed with the Parent, District, and, as to the specified claims, DESE, in accordance with my June 23, 2025 *Order.*

By the Hearing Officer,

/s/ Marguerite M. Mitchell
Marguerite M. Mitchell

Date: July 18, 2025

1. While the *Motion* is entitled and presented as being filed by “Student” Parent filed the *Hearing Request*. [↑](#footnote-ref-1)
2. As neither testimony nor oral argument would advance the Hearing Officer’s understanding of the issues involved, this Ruling is issued without a hearing pursuant to *Hearing Rule VII(D)*. [↑](#footnote-ref-2)
3. Specifically, the “Issues” set forth in the *Hearing Request* are: “1. Whether Boston’s proposed IEP and placement at [a District school] are reasonably calculated to provide [Student] with FAPE; [and] 2. Whether [Student] is owed compensatory services from Boston for the period he was unable to access FAPE between October 2023 and the present”. [↑](#footnote-ref-3)
4. Although DESE characterizes this argument as a request for dismissal of such claims, since it has yet to be joined as a party, procedurally, no claims exist against it at this time to dismiss. Thus, I consider DESE’s argument in the context of a request to limit the legal authority under which it is joined in this matter. [↑](#footnote-ref-4)
5. The facts stated herein are considered to be true solely for the purposes of this *Ruling* and consist of only those facts relevant to the issue of DESE’s potential joinder. [↑](#footnote-ref-5)
6. No information was provided as to the specific days Student was placed at Carbone. [↑](#footnote-ref-6)
7. MGL c. 71B, §3; see 603 CMR 28.08(3); *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). The “in addition to” language has been interpreted to mean that if services that the 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. *In Re: Plymouth Pub. Sch.* BSEA No. 06-2584, 12 MSER 33 (Crane, 2006) (internal citations omitted); *In Re: Fitchburg Pub. Sch.* BSEA No. 02-0038, 8 MSER 141 (Byrne, 2002). [↑](#footnote-ref-7)
8. See *Globe Newspaper Co. v. Beacon Hill Architectural Comm.*, 421 Mass. 570, 586 (1996) “Any judicial review of agency action embodies the principle that an agency has no inherent authority beyond its enabling act and therefore it may do nothing that contradicts such legislation”. [↑](#footnote-ref-8)
9. 20 US 1415(f)(3)(C). [↑](#footnote-ref-9)
10. 20 USC §1415(b)(6); see 34 CFR 300.507(a)(1). [↑](#footnote-ref-10)
11. See also 603 CMR 28.08(3)(a) (authorizing the BSEA to hear “… any matter concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law or the procedural protections of state and federal law for students with disabilities). [↑](#footnote-ref-11)
12. Section 1412 of the IDEA establishes the overarching oversight obligations of the State educational authority (SEA) . 20 USC 1412(a)(11) requires DESE ensure that “all requirements of [Part B of the IDEA] are met; [and] all educational programs for children with disabilities in the State … are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and meet the educational standards of the [SEA] …”. 20 USC 1412(12) and 34 CFR 300.154, the statute and regulation relied on in the *Motion*, also establishes the SEA’s obligation to ensure interagency agreements or coordination mechanisms are in place between noneducational public agencies responsible to provide or pay for special education or related services and the SEA to ensure the provision of FAPE. [↑](#footnote-ref-12)
13. See *In Re: Franklin PS and DDS*, BSEA No. 2500429, 31 MSER 35 (Mitchell, 2025) (declining to join DESE as a party to a matter where no evidence was presented as to DESE’s specific responsibility for the student as to DESE’s actions or inactions towards the student or his receipt of a FAPE); *In Re: Lawrence P.S.*, BSEA No. 2107071, 27 MSER 193 (Kantor Nir) (dismissing DESE from a matter as “Parent asserted no facts suggesting that DESE was involved in the IEP process, was asked to participate in Student's assessment or placement, or was called upon to fund Student's education or to respond to complaints regarding Student's program” citing *Carnwath v. Grasmick*, 115 F. Supp. 2d 577, 585 (D. Md. 2000)); compare *In Re: Mass. Dept. of Ed*., BSEA No. 03-1785, 9 MSER 1 (Crane, 2003) (distinguishing *Carnwath*,115 F. Supp. 2d at 585 and *Beard v. Teska*, 31 F.3d 942, 954 (10th Cir. 1994) *abrogated on other grounds by Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep’t of Health & Hum. Res.*, 532 US 598 (2001), concluding DESE may be liable for compensatory services due to allegations it was aware of the lack of an identified responsible LEA during the relevant timeframe in that matter, had failed to assign a responsible LEA despite being requested to do so, and had provided Student with tutoring services while also refusing to develop an IEP for her). [↑](#footnote-ref-13)
14. In Massachusetts the SEA is DESE. [↑](#footnote-ref-14)
15. See *Carnwath*, 115 F. Supp.2d at 582 (“The SEA may also be liable where its own failure to follow the procedural requirements of the IDEA leads to denial of FAPE. The critical point, however, is that the SEA may not be held liable where it was not responsible for the procedural failure”) (internal citations omitted); *R.V. v. Rivera*, 220 F. Supp. 3d 588, 594 (E.D. Pa. 2016) (finding the SEA to be a proper party in a FAPE claim against a failed charter school that was no longer in existence, reasoning that,

“[i]t does not follow from this, as [the SEA] fears, that in every instance where an LEA is alleged to have failed to provide a FAPE or otherwise comply with its IDEA obligations an SEA may be named in a due process complaint regarding those allegations. Where there is an existing LEA that could be held responsible for alleged FAPE violations, then it, and not the SEA, would be the proper party in a due process hearing. Where, as here, there is no other educational agency to which a parent may look to vindicate her child's rights to a FAPE because the LEA in which the alleged violations occurred has since ceased to exist, the SEA's obligations as the backstop to the state's IDEA obligations kick in. Accordingly, [the SEA] was a proper party to the IDEA due process complaint in this case”). [↑](#footnote-ref-15)
16. M.G.L. c. 71B §12 (”[DESE] shall establish and maintain a school department for school-age children in each institution under the control of the department[] of … youth services which provides support and care for resident children with a disability, acting jointly with the department which has control over the particular institution …”.); 603 CMR 28.06(9) (entitled “Educational Services in Institutional Settings”); see M.G.L. c. 71B §1; 34 CFR 300.2(b)(1)(iv) (the IDEA applies to “state and local juvenile and adult correctional facilities”); *Letter to Colleague* (OSERS, December 5, 2014). [↑](#footnote-ref-16)
17. 603 CMR 28.06(9) and (9)(c); see 20 US 1412(b) (entitled “State educational agency as provider of [FAPE] or direct services” and providing that “*if* the [SEA] provides [FAPE] to children with disabilities, or provides direct services to such children, such agency shall comply with any additional requirements of section 1413(a) [of the IDEA] *as if such agency were a local educational agency* …” (emphasis added)). [↑](#footnote-ref-17)
18. Although the *Motion* argues that pursuant to DESE’s IDEA general supervisory authority Student “may be entitled to relief from DESE due to their (sic) failure to provide, or ensure the provision of, [Student’s special education] services” while in DYS custody, this argument is beyond the actual issues raised in the *Hearing Request.* [↑](#footnote-ref-18)
19. See 20 US 1412(b). [↑](#footnote-ref-19)
20. See *Hearing Rule I(J)*. [↑](#footnote-ref-20)
21. 20 USC §1415(b)(6); M.G.L. c. 71 § 2A; see 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a), providing for the BSEA to hear “… any matter concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law or the procedural protections of state and federal law for students with disabilities.”; see 34 CFR 300.507(a)(1); 603 CMR 28.08(3)(a). [↑](#footnote-ref-21)