**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: **KB & Ashland Public Schools BSEA # 2601972**

# **RULING ON THE DISTRICT’S MOTIONS TO JOIN THE DEPARTMENT OF MENTAL HEALTH AND THE DEPARTMENT OF CHILDREN AND FAMILIES**

This matter comes before the Hearing Officer on the Ashland Public School District’s (District) *Motion to Join the Department of Mental Health* (DMH) and *Motion to Join the Department of Children and Families* (DCF) (collectively *Motions*), each filed with the Bureau of Special Education Appeals (BSEA) on August 14, 2025. On August 21, 2025, DMH and DCF each filed an *Opposition to Motion to Join* (collectively *Oppositions*) opposing joinder. DMH also filed an attached *Memorandum of Law*, while DCF incorporated its memorandum in its *Opposition*. The *Oppositions* each set forth both agency-specific arguments as to why its joinder was inappropriate as well as a mutual broader legal argument. The broader legal argument posits that the BSEA has misinterpreted its authority over each agency under M.G.L. c. 71B s 3, and that joinder of either agency is *ultra vires*. On August 21, 2025, Parent also filed a *Response* advising she “takes no position as to whether DCF and DMH are joined as parties, so long as their joinder does not delay the resolution of this matter”. For the reasons articulated below, the *Motions* are **ALLOWED**, and DMH and DCF are joined as parties to this matter[[1]](#footnote-1).

**RELEVANT PROCEDURAL HISTORY AND FACTUAL BACKGROUND[[2]](#footnote-2):**

The instant matter consists of a re-filing of a prior *Hearing Request* filed by Parent on February 10, 2025 against the District, DMH and DCF (BSEA No. 2508203), that was ultimately withdrawn without prejudice on May 30, 2025, for reasons unrelated to the pending *Motions* (Prior Matter). Prior to being withdrawn, DMH and DCF had requested dismissal as Parties, which was denied via an April 11, 2025 *Ruling on Motions to Dismiss* (*Prior Matter Ruling*)[[3]](#footnote-3).

1. Student is 13 years old and currently attends a day program at Doctor Franklin Perkins School, (Perkins). 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*).
3. Prior to moving to Ashland, Student had been placed at the Walker Residential School until transitioning to a day placement at Walker during the summer of 2022. Parent moved to Ashland that fall, where Student began attending an elementary school in the District. (*Hearing Request*;).
4. Student currently has an open clinical case with DCF that was opened following a 51A report filed in December 2024 alleging neglect by Parent. DCF offered services to the family as a result. In-Home Therapy (IHT) is the only remaining service DCF is currently providing to the family. IHT is scheduled to cease on September 12, 2025. DCF has determined that upon cessation of IHT it will be closing its clinical case with the family on the same date (September 12, 2025). Consistent with DCF Policy #86-007, the decision to close a case must be approved by the Area Program Manager (APM) responsible for the case. Also consistent with DCF Policy #86-007, within 14 calendar days of receipt of notice of closure, a family member (or within 30 calendar days of receipt of notice of closure a young adult who is an open consumer) may appeal the case closure[[4]](#footnote-4). (*Hearing Request*; *DCF Opposition*).
5. Since May 2023, Student has been deemed eligible for and has received services from DMH consisting of in-home therapy, out-of-home therapy and a parent partner. Currently Student receives a Therapeutic Support Specialist (TSS), a Case Manager and Respite support, as explained further, below. (*Hearing Request*; *DMH Opposition*).
6. Pursuant to a Settlement Agreement with the District, Student began attending Clearway School (Clearway) starting with the summer 2024 program. (*Hearing Request*).
7. From September 2024 through the end of that calendar year, Student experienced significant instances of behavioral dysregulation both at school and at home, resulting 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:
8. On September 4, 2024, Student was suspended from Clearway returning on September 9, 2024, after agreeing to a safety plan[[5]](#footnote-5);
9. 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”. This incident 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;
10. On October 19, 2024 Student was taken back to the emergency room resulting in another hospitalization between October 21, 2024 and October 30, 2024 for behavioral dysregulation and attempted medication overdoses;
11. On November 19, 2024 Parent had to call the police due to Student’s homicidal ideation towards Parent and his in-home therapist, leading to another hospitalization. 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
12. On December 20, 2024, Student was hospitalized after an incident involving his hitting Parent with a shoe and punching her while driving. (*Hearing Request*).
13. Parent is currently undergoing radiation treatment for a brain tumor and takes blood thinners making head injuries particularly dangerous. (*Hearing Request*).
14. As a result of Student’s behavioral needs, Parent has received several written recommendations for Student’s placement in a residential program, including a letter from Student’s pediatrician, dated November 25, 2024, a letter from an Ashland Police Officer written on behalf of Officers responding to 911 calls from Parent, dated December 13, 2024, and a letter from a registered nurse, dated December 23, 2024. (*Hearing Request*).
15. Student was placed at a Youth Community Crisis Stabilization (YCCS) program at Clifford Academy between November 25 and December 13, 2024. After discharge from this program, Student began spending three to four nights a week at a DMH respite bed run by Open Sky, with his remaining time spent at home. Currently, Student is typically spending two nights per week at this respite facility. DMH advises that respite support is “more typically provided for just one two-night stay per month”. (*Hearing Request*; *DMH Opposition*).
16. 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*).
17. On December 10, 2024, upon Student’s acceptance at Perkins, Parent asked DCF about voluntary services but was told to wait until a pending 51A investigation was completed. (*Hearing Request*).
18. When Student first began attending Perkins, his behavioral dysregulation required restraints multiple times a week. The behaviors consisted 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*).
19. During January 2025, Student had further behavioral incidents at home that 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*).
20. On February 6, 2025, the police were called to Open Sky due to Student’s interactions with another youth. Student was punching holes in the walls and had to be restrained for five minutes. The police were able to de-escalate the situation preventing Student from having to be hospitalized. (*Hearing Request*).
21. On February 14, 2025, four days after filing the *Hearing Request* in the Prior Matter, Student was taken to a local hospital after attacking Mother, throwing objects and spraying hand sanitizer at her. He was ultimately hospitalized from February 17 to February 24, 2025. (*Hearing Request*).
22. In March 2025, Student had four behavioral incidents in respite care as follows:
	1. On March 17, 2025 Student flipped furniture, tried to access potential weapons like a fire extinguisher and cleaning supplies, accessed a cable and started to whip it at staff, and attempted to escape two staff restraints through kicking and headbutting;
	2. On March 18, 2025, Student threw items at staff resulting in a restraint;
	3. On March 24, 2025, Student flipped furniture, threw items and broke CDs and DVDs he was attempting to throw at staff; and
	4. On March 31, 2025 crisis was called and Student was taken to the hospital as a result of escalating behaviors (*Hearing Request*).
23. Student was in an inpatient facility from April 2, 2025 through April 30, 2025, whereupon he was discharged and returned to YCCS. (*Hearing Request*).
24. In May and early June 2025, Student had additional aggressive episodes in respite care including destruction of property, and assault and leaving the program, resulting in a restraint on May 19, 2025[[6]](#footnote-6); and destroying property (inclusive of kicking/breaking staircase spindles, attempting to break a banister, using the spindles as weapons to break an air conditioner, thermostat and two electrical outlet covers, and throwing a garbage can that ricocheted to hit him in the head), resulting in a restraint leading to a minor staff injury on June 2, 2025. (*Hearing Request*).
25. In June and July of 2025, Student’s aggressions toward Parent included throwing items and kicking her door, causing Parent to call 911 on June 15, 2025; kicking and attempting to strangle her on June 16, 2 025; and throwing items, slapping and kicking Parent in the chest causing her to again call 911 (with Student then agreeing to go to the group home rather than the hospital) on July 7, 2025. (*Hearing Request*).
26. Student underwent a private Neuropsychological Evaluation on July 25, 2025. The resulting report noted that since the fall of 2024, despite Student’s “demonstrat[ing] recent progress within the structured environment of his therapeutic school, he continues to exhibit highly aggressive, dysregulated and unsafe behaviors at home and in respite care” that have increased in frequency and severity and extend beyond the home and beyond just Parent, and have resulted in “significant educational disruption with several weeks of missed instruction”. It was also noted that Student’s increasing behavioral dysregulation at the respite care facility was “atypical compared to other residents who tend to struggle initially but settle over time”. (*Hearing Request*).

**POSITION OF THE PARTIES**

The District seeks to join DMH and DCF based on its contention that such joinder is necessary as “the Hearing Officer can order other remedies that are not residential placement” with respect to said agencies, and each agency “may be able to provide additional services to provide the student with [a free appropriate public education] (FAPE)”. The District reiterates its arguments made opposing dismissal of DMH and DCF as parties in the Prior Matter[[7]](#footnote-7). Additionally, contending that the facts have not changed since the withdrawal of the Prior Matter, the District relies on the reasoning provided in the *Prior Matter Ruling* in support of joinder.

Both DCF and DMH argue that their respective rules, regulations and policies do not allow them to provide the relief Parent seeks in this matter (i.e., a residential placement for Student to provide him with a FAPE), as FAPE is not the responsibility of either agency. To that end, DMH submits that despite Student’s ongoing eligibility for DMH services, including its provision of respite services at a higher frequency than is typical, “it is not within the mandate or expertise of DMH to provide special education services to any individuals including DMH clients”. DMH also contends it “does not have an interest in how the parties resolve their dispute regarding FAPE” and that joinder of DMH is not necessary as it will “only serve to complicate and potentially obfuscate the issue the Parent has squarely placed before the Hearing Officer whether [Student] requires a residential placement for FAPE”.

Similarly, while DCF currently has an open clinical case for Student, it contends that its’ inclusion as a Party is premature and/or improper as Student is not in DCF’s “care or custody” and further that it intends to close its open clinical case on September 12, 2025. According to DCF, it has no ability and cannot be required, under its regulations, to provide placement services to children who are not in its “care or custody”. Additionally, the BSEA cannot direct DCF to change its determination to close Student’s open clinical case, as such a determination was made in accordance with its own Case Closure Policy (Policy # 86-007). DCF claims that the BSEA has previously held that “in situations where …. Agency involvement in the future is theoretically possible but speculative”, joinder is not warranted. Further, DCF argues that ordering it to provide specific services, even to support Student’s educational needs, is inconsistent with its Family Assessment and Action Plan Policy (Policy # 2017-01). DCF also contends that the issue of whether Student requires a residential placement to receive a FAPE, or for any other reason, can be determined without its joinder. DCF advises it has no evidence to introduce at a hearing on Student’s FAPE needs, nor would it seek to defend itself against the introduction of any such evidence.

Finally, both agencies contend that the BSEA has “consistently” misinterpreted its authority with regard to its ability to issue orders to any of the human services agencies identified in M.G.L. c. 71B § 3 and that BSEA decisions ordering these agencies to provide any services to students (even if such services are otherwise consistent with the agency’s rules, regulations or policies) are *ultra vires[[8]](#footnote-8)*. Relying on principles of legislative interpretation, both agencies contend that the language of the statue (as it uses “determine” not “order” and “in accordance with” not “consistent with”) does not actually grant the BSEA the authority the BSEA has historically interpreted it to grant over these agencies. Further, the agencies mutually claim that the legislative history of Chapter 159, section 162 of the Acts of 2000 (Section 162) (the legislation amending M.G.L. c. 71B § 3 to include the language pertaining to the BSEA’s jurisdiction over state agencies), does not actually support the BSEA’s long-held and mistaken conclusion that it can order state agencies to provide services under any circumstances[[9]](#footnote-9).

**LEGAL STANDARDS**

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”[[10]](#footnote-10).

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[[11]](#footnote-11).

**APPLICATION OF LEGAL STANDARDS**

To the extent that DMH and DCF present the same arguments made in their request for dismissal as parties in the Prior Matter, I find no reason to alter my prior analysis and rely on and incorporate that analysis herein. Specifically, as I reasoned in the *Prior Matter Ruling*, it is still the case that,

“all factors that are to be considered for joinder support both DCF and DMH remaining as Parties.… [T]he BSEA is the appropriate forum to resolve the issues in Parent’s *Hearing Request*[[12]](#footnote-12) and [failing to join] 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. [Not joining] 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. [Failing to join both agencies] 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 [not join] DCF or DMH as a party now”.

DCF also now argues thatit should not be joined as it will be closing its open clinical case on September 12, 2025 when it anticipates that the IHT services it provides to Parent and Student will end. While the closure of DCF’s open clinical case (after all appeal periods pertaining to this determination have run) will mean that Student is no longer a client of DCF’s and thus no longer eligible for any services from DCF, this has yet to occur[[13]](#footnote-13). Currently, therefore, contrary to DCF’s argument, it is DCF’s cessation of involvement, rather than its initiation of services that is “theoretically possible but speculative”. Since Student continues to receive services from DCF and has appeal rights should such services end, the potential case closure does not provide justification to deny joinder of DCF now.

DCF also argues that a BSEA order that it provide services in support of Student’s educational needs would be contrary to its Family Assessment and Action Plan Policy (Policy #2017-01), which requires all services DCF considers to support a child’s receipt of or access to education to be “*determined by the Department* in partnership with the family” (emphasis in original). However, this argument fails to account for Section II(D) of DCF’s Education Policy (Policy #97-002) that addresses DCF’s involvement with education for “Children in Open Cases and Not in Department Care or Custody”, and requires that in such situations, DCF will “provide support and guidance to the parent(s)/ guardian(s) in addressing the child’s educational needs”, including, “through the action plan, the Social Worker and parent work together to develop a plan to address the child’s difficulties, including but not limited to: … exploring school-based and community-based supportive services; …”. Although collaboration between DCF and a parent is part of both Policies, the Education Policy does not require its work to be “determined solely by DCF”, and thus leaves room for a hearing officer to issue orders that would comport with it[[14]](#footnote-14).

I turn now to address the *ultra vires* claim. Even taking as true the agencies’ premise that the use of “determine” in the statute means to make factual determinations, that does not mean there is no legal authority within the statute for the BSEA to issue orders requiring them to provide services “in addition to” the services to be provided by the District, “in accordance with the rules, regulations and policies of the respective agencies”[[15]](#footnote-15). Moreover, the BSEA’s interpretation of the statutory language in question has been consistently applied for almost a quarter of a century, and was based on a detailed, thorough and well-reasoned analysis of the language, legislative intent and its interaction with the requirements of the IDEA, shortly after the amendment adding this provision was made[[16]](#footnote-16). I find that analysis was proper, and I adopt it and incorporate it herein.  Specifically, as Hearing Officer Crane concluded in *Medford*,

“An essential purpose of Section 162 (and accompanying regulations) is to provide a mechanism (through the BSEA) to ensure that all services necessary for a student to receive what he or she is entitled to under special education law will in fact be provided, even when additional services must be provided by one of the referenced human service agencies…. A BSEA Hearing Officer has the authority to order a human services agency to provide services beyond what the Hearing Officer determines to be the responsibility of the school district. Such an order should be limited to what is necessary to ensure that the federal and state special education obligations to a child are satisfied … [and] must be consistent with that agency’s statutory, regulatory and policy standards setting forth what services are delivered by the agency and to whom those services are provided. The BSEA Hearing Officer should act pursuant to the federal and state statutes, regulations and procedural rules specifically governing BSEA proceedings rather than stepping into the shoes of (and operating under the statutes, regulations and procedural rules governing) a Hearing Officer appointed by the human service agency”[[17]](#footnote-17).

Further, Hearing Officer Crane analyzed the meaning of “in accordance with” as it applied to the three agencies involved in *Medford* – DMH, DCF (referred to by its prior name the Department of Social Services) and the agency formerly known as the Department of Mental Retardation and currently known as the Department of Developmental Services. He concluded that these agencies’ proposed interpretation of this phrase (i.e., “that the legislature has not created an obligation through Section 162 unless the same obligation separately exists within the DMR statute or regulations”), which is the same interpretation argued in the *Oppositions* in the instant matter*,* “… would be tantamount to rendering Section 162 meaningless with respect to any dispute before the BSEA involving any state [agency and i]t is unlikely that the legislature intended to enact a statute that would immediately fall of its own weight and have no practical effect” [[18]](#footnote-18). Rather, a reasonable interpretation of Section 162 “consistent with its underlying purpose” existed to “avoid this result”[[19]](#footnote-19), namely that “the BSEA Hearing Officer must act in a way that is consistent with and in harmony with the substance of the state agency statutory, regulatory and policy standards, as they may be read to be relevant to the particular special education student” (emphasis added)[[20]](#footnote-20). The *Medford* interpretation would also “… permit the BSEA to comply with its mandate under federal law – that is, to ensure that Student’s federally-required special education and related services are provided to [the student] (citations omitted)”[[21]](#footnote-21).

Finally, in both *Medford* and the instant *Oppositions* it was argued that the BSEA’s authority and ability to exercise jurisdiction over the agencies “infringes” on the discretion each agency has to decide the services and supports it provides to its clients. *Medford* properly reasoned that such an argument is not persuasive to exclude joinder of any agency, as “the obvious retort” to this argument is that a BSEA order need not specify a service or placement, but rather can be general in nature, “ … giving discretion to [the agency]to determine which vendor should provide the services, the location of those services, and ultimately the particular placement”[[22]](#footnote-22).

In conclusion, the *Motions* are **ALLOWED** and both DMH and DCF are joined as parties to this matter[[23]](#footnote-23). All Parties will participate in the initial Conference Call scheduled for September 2, 2025 at 4:00 PM as set forth in the August 22, 2025 *Order*, a copy of which was previously shared with DMH and DCF as a courtesy.

By the Hearing Officer,

/s/ Marguerite M. Mitchell
Marguerite M. Mitchell

Date: September 2, 2025

1. No Party or agency requested a hearing on the *Motions.* 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 Rules for Special Education Appeals* (*Hearing Rules*)Rule VII(D). [↑](#footnote-ref-1)
2. The factual statements set forth are taken as true for purposes of this *Ruling* only. [↑](#footnote-ref-2)
3. The citation for the published *Prior Matter Ruling* is *In Re: Ashland PS & [DMH] & [DCF]*,31 MSER 92 (Michell, 2025). Many of the arguments presented in that matter have been repeated in the instant *Motions* and *Oppositions*, and thus I rely on my analysis in the *Prior Matter Ruling*, which is incorporated herein as appropriate. [↑](#footnote-ref-3)
4. DCF Policy# 86-007 (B)(12) and (C)(1). No information was provided as to whether the APM has yet approved the case closure decision, when the notice of closure was received by Mother or Student, if at all, or if the appeal period has run at this time. [↑](#footnote-ref-4)
5. No information was provided about the conduct that led to the suspension. [↑](#footnote-ref-5)
6. Due to concerns with potential excessive force during this restraint, the respite facility filed a 51A report on itself with DCF. (*Hearing Request*). [↑](#footnote-ref-6)
7. Refer to the “Position of the Parties” section in the *Prior Matter Ruling* for a summary of the District’s arguments opposing dismissal of DMH and DCF at that time, which arguments are incorporated herein. [↑](#footnote-ref-7)
8. The language in question reads “The hearing officer may determine, in accordance with the rules, regulations and policies of the respective agencies, that services shall be provided by [DCF] the department of mental retardation, [DMH], the department of public health, or any other state agency or program, in addition to the program and related services to be provided by the school committee”. [↑](#footnote-ref-8)
9. As an essential part of this argument, relying on a definition from Black’s Law Dictionary (which, based on the quoted language, appears to be from the Second edition), both agencies argue that the statute’s use of the word “shall” in the phrase “that services shall be provided by [DCF] … [and DMH] …” is “unquestionably used as directory and not mandatory”. However, the Dictionary explains that defining “shall” in a permissive or directory context is only appropriate “in cases where no right or benefit to any one depends on its being taken in the imperative sense…”, which is not the case here. Further, there is language in Second edition that is not carried over into future editions. For instance, the Fifth edition’s definition of “shall” does not include the sentence beginning with “also, as against the government …” which the agencies’ emphasize as part of their argument pertaining to the appropriate interpretation of “shall”. At this stage of the proceedings, however, since the question involves joinder of the agencies only, it is unnecessary to undertake an extensive analysis of the definition of “shall” across all 12 editions of Black’s Law Dictionary. [↑](#footnote-ref-9)
10. MGL c. 71B, §3; see 603 CMR 28.08(3). [↑](#footnote-ref-10)
11. *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-11)
12. 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-12)
13. Notwithstanding, as M.G.L. c. 71B §3 mandates that I cannot order relief contrary to the rules, regulations or policies of DCF, should DCF close its clinical case on behalf of Student with all appeal periods having run, it may request reconsideration of its joinder. See *In Re: Medford Pub. Schs.*, BSEA No. 01-3941, 7 MSER 75 (Crane, 2001) (declining to join DMH without prejudice, as DMH had determined that the student was not eligible for continuing care services, and this determination had been upheld on appeal, but since, at the hearing on the joinder motion, further appeal rights were found to exist for the student, that had not properly been offered, the student was permitted to seek DMH’s joinder again should the eligibility decision change). [↑](#footnote-ref-13)
14. For instance, it may be that after a hearing on the merits, if I conclude Student does not require a residential placement for educational reasons, I could conclude he does need additional community supports to access his education, and thus an order for Student’s Social Worker to meet with Parent to develop an action plan that addresses Student’s receipt of community-based supportive services that he is not otherwise receiving, would be appropriate and consistent with DCF’s Education Policy. [↑](#footnote-ref-14)
15. I also disagree that the use of the word “shall” in this sentence is anything other than mandatory, and if this is so, then the entire *ultra vires* argument fails. The sentence prior to the one being challenged uses “shall” twice and in both instances, the use of “shall” is clearly mandatory, not permissive, as it is used to track the requirements of the IDEA. Specifically, the prior sentence reads: “The hearing officer shall order such educational placement and services as he deems appropriate and consistent with this chapter to assure the child receives a free and appropriate public education in the least restrictive environment; provided, however, that a presumption shall exist to direct such placement to the regular educational environment”. As the agencies recognize in their *Oppositions*, a canon of statutory construction is that “where words are used in one part of a statute in a definite sense, they should be given the same meaning in another part of the statute”. See *Beeler v. Downey*, 387 Mass. 609, 617 (1982) (citation omitted). [↑](#footnote-ref-15)
16. *In Re: Medford*, BSEA No. 01-3941, 7 MSER 75 (2001). [↑](#footnote-ref-16)
17. *Id*. [↑](#footnote-ref-17)
18. *Id*. [↑](#footnote-ref-18)
19. *Id*. citing *Dowell v. Commissioner of Transitional Assistance*, 424 Mass. 610, 613 (1997) (“provisions of legislation addressing similar subject matter are to be construed together to make an harmonious whole consistent with the legislative purpose and to avoid rendering any part of the legislation meaningless”) (citations omitted); *Champigny v. Commonwealth*, 422 Mass. 249, 251 (1996) (court declined to read statute in a manner that the “legislative effort would have had no practical effect”). [↑](#footnote-ref-19)
20. *In Re: Medford*, BSEA No. 01-3941, 7 MSER 75 (2001) (citations omitted). [↑](#footnote-ref-20)
21. *Id*. [↑](#footnote-ref-21)
22. *Id*. DMH and DCF also claim there are due process rights expressly available Parents and LEAs at BSEA hearings under the statutory scheme, that are not explicitly available to agency parties. Specifically, they claim the statute does not provide them with the right to appeal, and the right to pursue resolution through mediation. They also argue that while DESE has the right to require LEAs to comply with BSEA decisions, DESE has no such authority to “direct [either agency] commissioner to provide services …[or] to enforce BSEA orders against [them]”. I note, however, that while the statute does not explicitly provide an appeal right to agencies, the provisions of *Hearing Rule XIII(A)* (which states that “[*a*]*ny party* aggrieved by the decision of the Hearing Officer may file a complaint for review …” (emphasis added)), does provide such appeal right. Also, any party to a BSEA proceeding can access the mediation dispute resolution option at any time, with the agreement of all other parties. Further, regardless of whether DESE can enforce a BSEA decision against either agency, if an agency is the subject of a BSEA order in a Decision made after a hearing on the merits and a party believes that the Decisionis not being implemented, that party may file a motion requesting an order of compliance with the decision from the BSEA in accordance with *Hearing Rule XIV*. [↑](#footnote-ref-22)
23. Additionally, DMH and DCF’s claim that its joinder will “divert[] attention and resources away from other crucially important activities that serve vulnerable children adults and families” fails to account for the significant needs that Student here faces, which both agencies currently and historically have supported. [↑](#footnote-ref-23)