

**COMMONWEALTH OF MASSACHUSETTS**  
**DIVISION OF ADMINISTRATIVE LAW APPEALS**  
**Bureau of Special Education Appeals**

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In Re: Student

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BSEA No. 2004507

Winchendon Public Schools, Boston  
Public Schools, & Mass. Dept. of Children  
and Families (DCF)

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**RULING ON MOTION OF STUDENT TO JOIN THE DEPARTMENT OF  
CHILDREN AND FAMILIES AS A NECESSARY PARTY**

This matter comes before the BSEA on a *Motion of Student to Join the Department of Children and Families* (“*Motion*”) as a necessary party in this action. The following background information is gleaned from the parties’ submissions and additional representations by counsel, and is adopted for purposes of ruling on this *Motion* only.

On or about January 17, 2019, the Juvenile Court granted custody of Student to the Department of Children and Families (DCF). Student has remained in DCF custody to date. Shortly after obtaining custody, DCF placed Student in a DCF-funded group home in Winchendon, MA. Student remained in the Winchendon facility until approximately January 2, 2020, when it closed down, and DCF moved her to another group home approximately 1 ½ hours away. On information and belief, Student currently lives in this second group home, which is not located within the school district served by Winchendon.

As Student’s custodian, DCF is responsible for determining Student’s “place of abode...and education,”<sup>1</sup> Because DCF has placed Student in substitute care, it is required to determine promptly whether it is in Student’s best interests to attend school in her original school district or in the district where her placement is located. DCF must enroll Student in the district it has chosen immediately after making the best interests determination. DCF must make a

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<sup>1</sup> See MGL c. 119 § 21.

best interests determination every time it changes Student's residence with a corresponding change in school districts.<sup>2</sup>

On or about January 25, 2019, shortly after Student's placement, DCF determined that it was in Student's best interests to enroll in Winchendon Public Schools (Winchendon or WPS). The parties dispute when DCF formally enrolled her. Student claims that DCF enrolled her in January 2019, and WPS asserts that DCF did not provide necessary paperwork until late March of that year. There is no dispute, however, that at some point between January and March 2019, Winchendon became programmatically responsible for Student's special education services.<sup>3</sup>

In approximately November 2019, with the agreement of all parties, Student began an extended evaluation in a special education collaborative near Winchendon. On or about January 2, 2020, while the extended evaluation was still underway, DCF moved Student to the second group home in a different school district, referred to above. On January 9, 2020, pursuant to a second best interests determination, DCF decided that Student would remain enrolled in Winchendon rather than in the district where her new placement is located. During the one week between Student's move to the new district and DCF's determination, Student did not attend her extended evaluation because it was not clear where she would be enrolled. On information and belief, Student did not receive any other educational services during this period.

On January 13, 2020, Student filed this *Motion to Join the Department of Children and Families* ("*Motion*") as a necessary party. On January 22, 2020, both Winchendon and Boston notified the BSEA that they would not oppose joinder of DCF. To date, DCF has not filed an opposition or other response to Student's *Motion*.

## DISCUSSION

Pursuant to M.G.L. c. 71B §3 the BSEA may order human service agencies to provide services to the child who is the subject of the hearing, as follows:

The hearing officer may determine, in accordance with the rules, regulations and policies of the respective agencies, that services shall be provided by the [human service agencies including DCF] or any other

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<sup>2</sup> See Every Child Succeeds Act (ESSA), P.L. 114-95 (2015). See also "*Guidance for Schools and Districts on Implementing Foster Care Provisions of ... (ESSA)(1/26/18)*", (hereafter "*Guidance*") jointly promulgated by DCF and the Department of Elementary and Secondary Education (DESE), which requires DCF to enroll the child in the chosen district immediately after making the "best interests" determination. *Id.*

<sup>3</sup> Because Student had attended the Boston Public Schools before entering DCF custody, Boston retained financial responsibility pursuant to 603 CMR 28.10(5)(b).

state agency or program in addition to the program and related services to be provided by the school committee. *Id.*

The implementing regulation provides that “the jurisdiction of the [BSEA] over state agencies...shall be exercised in accordance with the rules, regulations and policies of the respective agencies...” 603 CMR 28.08(3). In other words, the BSEA may order the agency to provide services that are (a) among those that the agency’s own regulations authorize or require it to provide for the student at issue, and, (b) necessary to enable the student to benefit from the free, appropriate public education (*i.e.*, special education and related services) already required of and provided by the school district. Obviously, in order to exercise jurisdiction over the state agency, the BSEA must first join the agency as a party to the hearing. Rule I.J of the *Massachusetts Hearing Rules for Special Education Appeals* (BSEA Hearing Rules) allows a BSEA hearing officer to join a person or entity as a party:

...where complete relief cannot be granted among those who are already parties, or the person being joined has an interest relating to the subject matter of the case [such that]...the case cannot be disposed of in their [sic] absence. Factors in determining whether joinder is appropriate are: the risks of prejudice to the present parties; the range of alternatives for fashioning relief; the inadequacy of a judgement entered in the proposed party’s absence and the existence of an alternative forum to resolve the issues. *Id.*

Among the factors that hearing officers consider in determining whether the criteria of 603 CMR 28.08(3) and Rule I.J have been met are the following:

- the student’s eligibility for services from the agency;
- status as a current client of the agency;
- length and degree of involvement that the agency already has with the student, if any;
- likelihood that an order to the school district(s) alone will provide the student with FAPE, that is, whether FAPE can be “developed, delivered, declared or guaranteed without the participation of the state agency sought to be joined.” *In Re Auburn Public Schools*, 8 MSER 143 (2002);
- administrative efficiency of joining a potentially responsible state agency early in the proceeding.

Based on the relevant law as applied to the facts asserted by the parties, as well as on the fact that the *Motion* is unopposed, Student’s *Motion* to join DCF as a party in this matter will be GRANTED because the criteria for joinder have been met. Specifically, Student is currently a “client” of DCF in that she is in the legal and physical custody of the agency and is likely to remain so for the foreseeable

future. Since January 2019, Student has lived in DCF-funded group homes. As Student's custodian, DCF is responsible for determining where Student lives and attends school, as well as for promptly enrolling her in the district it chooses for her pursuant to a best interests determination.

In the instant case, Student contends that Winchendon failed to provide her with a FAPE for certain time periods, and, therefore, owes her compensatory education services. Winchendon counters that Student was not enrolled in the District during some periods for which Student claims an entitlement to relief. There is no dispute that during the time at issue, DCF, as Student's custodian, was responsible for enrolling Student in WPS. If the evidence produced at hearing shows that DCF failed to do so in a timely manner, then DCF might share liability for compensatory services, if any, with Winchendon (as well as with Boston, as the fiscally-responsible district). Unless DCF is a party in this matter, the BSEA cannot order such relief with respect to DCF, and/or could not apportion responsibility for compensatory services among the school districts which currently are parties and DCF. Such a result is potentially prejudicial to Student as well as to both Winchendon and Boston.

Additionally, the current parties in this case agreed that Student needs extended evaluation at a special education collaborative in order to receive FAPE, and Winchendon issued an IEP to this effect. This extended evaluation began in November 2019 pursuant to the accepted IEP, and was interrupted in January 2020, not because of any action by Student or Winchendon, but because DCF changed Student's living situation to another school district, and did not determine where she would attend school until one week following the move. If Student claims and proves that she is owed compensatory services stemming from this hiatus in her extended evaluation, the BSEA cannot order appropriate relief without risk of prejudice to the existing parties unless DCF is joined as a party.

Finally, joining DCF early in this proceeding will increase the efficiency of the BSEA's dispute resolution process, especially in light of DCF's role as Student's custodian.

### **ORDER**

The *Motion of the Student to Join the Department of Children and Families* as a party in this matter is GRANTED.

By the Hearing Officer,

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Sara Berman

Dated: February 4, 2020

