

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Oliver¹ v. Falmouth Public Schools

BSEA #1906369

**RULING ON FALMOUTH PUBLIC SCHOOLS' MOTIONS TO JOIN THE
DEPARTMENT OF CHILDREN AND FAMILIES AND THE DEPARTMENT OF
MENTAL HEALTH**

This matter comes before the Hearing Officer on two joinder motions filed by Falmouth Public Schools in a matter pending before the Bureau of Special Education Appeals (“BSEA”). Oliver’s parents (“Parents”) filed a *Request for Accelerated Hearing* against the Falmouth Public Schools (Falmouth or “the District”) on April 12, 2019, challenging the Individualized Education Program (IEP) proposed for the period from March 18, 2019 to March 17, 2020, which placed Oliver at Cape Code Collaborative (“CCC”). Parents sought placement in a residential therapeutic program. In support of accelerated status, Parents asserted that Oliver was about to be discharged from the Walker Community-Based Acute Treatment Program (“Walker CBAT”) in Needham, Massachusetts because his insurance funding was terminating; that the special education services proposed by Falmouth were sufficiently inadequate that harm to him is likely; and that his and others’ health and safety would be endangered by delay. Accelerated status was granted, and the hearing was scheduled for May 13, 2019.

On April 19, 2019, the District filed an assented-to request for an extension until April 29, 2019 to file its *Response to Parents’ Hearing Request*, which was allowed. On April 29, 2019 Falmouth filed its *Response to Parents’ Request for an Accelerated Hearing*, in addition to the instant *Motion to Join the Massachusetts Department of Children and Families* (“DCF”) and *Motion to Join the Massachusetts Department of Mental Health* (“DMH”). Falmouth argued that accelerated status was improper, as its fully accepted IEP and available educational program for Oliver at CCC is appropriate, and while he continues to reside at the Walker CBAT, there is no immediate threat to his health or safety or the health or safety of others.² The basis of both joinder motions is Falmouth’s contention that to the extent the BSEA may find that Oliver requires a residential placement, he does not require it for educational reasons. Moreover, the BSEA may conclude that Oliver does not require residential placement, but does need additional supports while remaining at home, and those supports should be provided by DCF and/or DMH.

As to DCF, Falmouth asserts that Oliver was taken into DCF custody at birth and adopted by Parents when he was three years old. Parents sought assistance from the Juvenile Court recently via a Child Requiring Assistance petition (“CRA”). According to Falmouth, on April 26,

¹“Oliver” is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

²By the time Falmouth filed its *Response to Parents’ Hearing Request*, the Department of Children and Families (“DCF”) had agreed to support Oliver’s continued placement at the CBAT through – but not beyond – the conclusion of the BSEA Hearing, by way of a voluntary agreement with Parents.

2019, Parents and DCF had agreed that Oliver would be taken into DCF custody through the CRA, but the CRA was continued by the judge on that date instead.³

As to DMH, Falmouth contends that given Oliver's primary psychiatric needs, which resulted in five psychiatric hospitalizations over the past year, DMH wrongfully denied him clinical services on March 1, 2019. At the time the District filed for joinder, Parents' appeal of DMH's denial of authorization for services was pending.

On April 30, 2019, Parents filed their *Response to Falmouth Public Schools' Response to Parents' Request for an Accelerated Hearing and Motions to Join DMH and DCF*. They argued that because Oliver's health insurance had stopped funding his placement at the CBAT, the next steps were unclear, and that five psychiatric hospitalizations over a three month period during his time as a student at CCC suggested that the placement was sufficiently inadequate that harm resulted. Parents also submitted additional information regarding the pending CRA and their application to DMH in order to correct what they referred to as factual errors in Falmouth's motions. Parents reasserted their position that Falmouth is responsible for providing Oliver with a residential placement to meet his educational needs.

Following a Conference Call on May 1, 2019, the undersigned Hearing Officer denied Falmouth's challenge to accelerated status, as Oliver's multiple recent hospitalizations and the tenuous nature of his placement at the Walker CBAT satisfy the relevant standard: the health and safety of Oliver and others would be endangered by delay.⁴ On May 6, 2019, both DCF and DMH filed oppositions to Falmouth's joinder motions.

A telephonic *Motion Session* regarding Falmouth's joinder motions took place on May 7, 2019. For the reasons set forth below, Falmouth's *Motion to Join the Department of Children and Families* is hereby ALLOWED. Falmouth's *Motion to Join the Department of Mental Health* is hereby DENIED without prejudice, though without a change in the status of Oliver's involvement with DMH, a future joinder motion will not succeed.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The following facts are not in dispute and are taken as true for the purposes of this *Motion*. These facts may be subject to revision in subsequent proceedings.

1. Oliver is a ten-year-old boy whose legal residence is with his adoptive parents and sister in Hatchville, Massachusetts. Falmouth is the local educational agency responsible for providing him with a free appropriate public education (FAPE).

³According to Parents, there was no agreement between Parents and DCF regarding custody of Oliver in connection with the Child Requiring Assistance petition (CRA), but Parents did anticipate that DCF would take custody of him on the date of the CRA fact-finding hearing, which was scheduled for April 26, 2019. The judge in the Juvenile Court continued the fact-finding hearing to the end of May, citing the need for additional evidence, and DCF did not take custody.

⁴At this time it is unclear whether the special education services Oliver is currently receiving are sufficiently inadequate such that harm to him is likely. The adequacy of Oliver's special education services is the issue to be resolved at hearing.

2. Oliver has been diagnosed with Pediatric Onset Bipolar Disorder, ADHD combined type, and anxiety. According to Falmouth, his diagnoses also include Disruptive Mood Dysregulation Disorder and Post-Traumatic Stress Disorder. In the context of generally average cognitive functioning, he struggles with inhibition, emotional control, flexibility, and self-monitoring.
3. Oliver began attending the Falmouth Public Schools in kindergarten (2014-2015). Midway through kindergarten, he was diagnosed with Pediatric Onset Bipolar Disorder due to significant family history, traumatic early history, rapid switching of moods from euthymic to mania, irritability, aggressiveness, and hypersexuality. He was psychiatrically hospitalized once during kindergarten and finished out the year in the “Connect Program,” which provided for special education supports in a mainstream setting and a substantially separate setting he could go to as needed.
4. Oliver was psychiatrically hospitalized twice in first grade (2015-2016) and twice in second grade (2016-2017), secondary to behavioral outbursts and aggressive behaviors. By the spring of his second grade year, he was spending most of his time in the Connect room due to dysregulation.
5. Falmouth referred Oliver for an independent neuropsychological evaluation in April of 2017 with Terry Harrison Goldman, Ed.D. Dr. Goldman recommended residential placement.
6. In the spring of 2017, Oliver’s IEP Team concluded that he required residential placement and proposed an IEP for the period from May 25, 2017 to May 24, 2018 (2017-2018 IEP) that placed him residentially at the Walker School.
7. Parents accepted the 2017-2018 IEP and Oliver began attending the Walker School’s residential program on June 24, 2017, following another hospitalization. He was able to engage and as the year progressed, had a number of successful home visits. The Team agreed to transition Oliver to a day program at CCC in light of his progress.
8. Parents accepted in full an IEP for the period from July 2, 2018 to March 21, 2019 placing Oliver at CCC, a public special education day school approved by the Commonwealth to provide services to publicly-funded students.
9. Oliver was discharged from Walker’s residential school program on June 26, 2018. He was hospitalized at Cambridge Hospital on July 25, 2018. He was discharged at some point over the summer, at which point he began attending CCC.
10. In or about August 2018, during Oliver’s inpatient hospitalization at Cambridge Hospital, Parents applied to DMH for services. DMH stated that no agency services would be provided because Parents had supports from the Children’s Behavioral Health Initiative (“CBHI”), which had been in place since Oliver was six years old.

11. Oliver had a difficult time adjusting to CCC. At home he was highly aggressive, endorsed suicidal ideation, and refused to follow rules. In November 2018, his CBHI home service providers refused to provide services any longer due to concerns for their own safety.
12. On November 12, 2018, Oliver was evaluated at Cape Cod Hospital due to dysregulation and an attempt to exit the home through a second floor window. Parents initially contacted Mobile Crisis, but Crisis refused to come to the home, citing safety concerns. He remained in the emergency room for six days and was subsequently admitted to Cambridge Hospital on an inpatient basis. He was discharged on December 3, 2018.
13. On December 7, 2018, Oliver was behaving unsafely in the home again and attempted to escape through a second-floor window. The Falmouth Police took him to the hospital, where he was committed pursuant to M.G.L. chapter 123, section 12. After five days in the emergency room, he was readmitted to Cambridge Hospital.
14. On December 14, 2018, Oliver was transferred to a CBAT in New Bedford. On December 25, 2018, he was transported to the emergency room at St. Luke's Hospital, where he remained for three days.
15. On December 28, 2018, Oliver was admitted to Providence Behavioral Health in Holyoke, Massachusetts. According to Parents, he was unable to make progress in that setting. Parents asked Falmouth to place Oliver back in a residential setting, but Falmouth refused.
16. In late December 2018, Parents requested voluntary services from DCF. Their request was denied.
17. On January 23, 2019, Oliver transferred from Providence to the Walker CBAT.
18. On February 3, 2019, Oliver went on an off-grounds pass from Walker CBAT with his family and became dysregulated. The Needham police had to help him return to the program.
19. While at Walker CBAT, Oliver has engaged in numerous incidents of unsafe behavior, including biting staff, destroying property, throwing objects, and threatening and attacking staff and other children. He has required several physical restraints. He is often unable to participate in tutoring, which is scheduled for two hours a day, and has not received occupational or speech therapy since his admission.
20. According to Parents, CBAT staff members believe Oliver requires immediate placement in a residential therapeutic school program to access the curriculum, maintain safety, and develop coping skills. According to the District, Walker staff wrote a letter dated February 11, 2019 stating that in order to "best manage [Oliver]'s mental health needs" he requires "an out of home placement to ensure his safety and the safety of his family members."
21. On February 12, 2019, Oliver's psychiatrist (who has been treating him since January 2015) wrote that he is a danger to himself and others, has become unresponsive to medications and

psychotherapy interventions, and requires residential placement because due to his current mental state and history of dangerous behaviors he “is unable to return home at this time.”

22. On February 19, 2019, Parents filed a Child Requiring Assistance petition. According to Parents, they filed this petition in an attempt to maintain Oliver’s placement at the CBAT while continuing to negotiate with Falmouth regarding a residential placement, not because they sought to place him in DCF custody for residential care. At a court date on this petition on March 6, 2019, some discussion occurred regarding an interagency meeting between DCF and DMH.
23. At some point around this time, an application for DMH services was submitted on behalf of Oliver, requesting residential placement specifically. On or about March 1, 2019, DMH denied service authorization for Oliver, stating it was “unclear” whether he met clinical eligibility requirements, and sent Parents a letter stating its position that Falmouth was responsible for providing Oliver with a residential placement.
24. Parents appealed DMH’s denial of services by seeking review by the Area Medical Director.
25. At Oliver’s annual review meeting on March 18, 2019, Falmouth proposed an IEP for the period from March 18, 2019 to March 17, 2020, calling for Oliver’s continued placement as a day student at CCC. The IEP noted that Oliver had attended only thirty-two (32) days of the 2018-2019 school year, and that during this time, he had fourteen (14) staff-directed breaks and nineteen (19) time outs lasting from a few minutes to a few hours.
26. At the time the *Hearing Request* was filed on April 12, 2019, Walker CBAT planned to discharge Oliver in short order due to the insurance company’s threat to cease funding for the placement.
27. Parents and Falmouth believed that a CRA fact-finding hearing would take place in the Juvenile Court on April 26, 2019, and that as a result DCF would gain custody of Oliver under the CRA. Instead the judge continued the hearing, and custody remained with Parents.
28. By letter dated April 26, 2019, DMH’s Area Medical Director denied Oliver’s application. The department determined that Oliver did meet DMH clinical criteria under

104 CMR 29.04(3), but denied service authorization under the “needs and means”⁵ component of the DMH service authorization process. Specifically, DMH based its denial on Oliver’s “pre-existing entitlement to a FAPE from the School District along with the fact that School District had been fully supporting and funding a private residential school placement for student.”⁶

29. DMH’s letter denying service authorization informed Parents of their right to further appeal the denial of DMH services by filing for a fair hearing within twenty (20) days of their receipt of that letter. Parents have indicated that they do not intend to file for fair hearing.

30. At some point between April 12, 2019 and May 1, 2019, DCF and Parents entered into a temporary emergency agreement, under which DCF assumed voluntary care of Oliver for the purpose of maintaining his placement at Walker CBAT through the resolution of the present BSEA matter, in order to avoid further psychiatric hospitalizations.

DISCUSSION

The outcome of Falmouth’s *Motion to Join DCF* and *Motion to Join DMH* will both be governed both by BSEA rules for joinder of additional parties and BSEA jurisdiction to order that services be provided by state agencies in pending cases. Pursuant to the BSEA *Hearing Rule I(J)*:

“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 judgment entered in the proposed party’s absence; and the existence of an alternative forum to resolve the issues.”

This mechanism is often used by parties to join state agencies (such as DCF and DMH) that the BSEA may determine must provide services to a student in a matter before it. The extent to which the BSEA may order such services is set forth in Mass. Gen. Laws ch. 71B, § 3, which provides:

⁵ Pursuant to 104 CMR 29.04(4)(c-d), the determination of need for DMH services rests in part on “assessment of the individual’s current resources, entitlements, and insurance that allow for provision of appropriate services in the community” and “assessment of the availability of appropriate services from other public or private entities.”

⁶ See *Opposition to Motion to Join the Department of Mental Health* (“DMH”).

“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 children and families, the department of mental retardation [now the department of developmental services], the department of mental health, 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.”⁷

As such, to determine whether DCF and/or DMH should be joined as a party in the present case, I must determine, as to each agency, first, whether complete relief may be granted among those who are already parties, or if the agency 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;⁸ and if so, second, whether joinder of that agency is in accordance with the agency’s rules, regulations, and policies.⁹

A. DCF

Falmouth’s position is that its IEP proposing continued placement of Oliver at CCC is appropriate, and to the extent Oliver requires a residential setting, he does not require it for educational reasons. After a hearing, the BSEA may determine that additional services and supports, up to and including a residential placement, are needed for non-educational reasons and that they are the responsibility of a state agency. Given the open CRA, and the substantial likelihood that the Juvenile Court judge will grant custody of Oliver to DCF, the department would be the appropriate provider of these services. As such, DCF is a necessary party in these proceedings, and complete relief could not be effectuated in DCF’s absence.

In its *Opposition to Falmouth’s Motion to Join the Department of Children and Families*, DCF argues that to the extent the BSEA may find that a residential placement is necessary to secure a FAPE for Oliver, that placement is Falmouth’s responsibility, and in the event that the BSEA finds that such a placement is not necessary for educational purposes but is otherwise advisable, DCF’s participation is not required. According to DCF, Oliver is in the department’s voluntary care on a temporary, emergency basis; the agreement between DCF and Parents, which is intended to permit sufficient time for resolution of the BSEA matter, was made “solely in order to avoid a likely psychiatric hospitalization in light of the insurance company’s refusal to continue payment for the emergency placement.” Prior to accepting this limited-duration voluntary placement agreement, DCF had no case with the family to provide placement or services, and at the end of this period, DCF will not have care or custody of Oliver, or an open case to provide services to the family. Even if Oliver were in DCF custody and/or the BSEA were to determine that DCF needed to provide some residence for him that is not an educational necessity, DCF contends, it is in DCF’s discretion, rather than the BSEA’s jurisdiction, to determine the particular placement or services he will receive. Finally, Parents are not seeking any additional services beyond residential placement that may be necessary to ensure Oliver will be able to access and benefit from Falmouth’s special education program. Because DCF has only

⁷M.G.L. c 71B, § 3; see 603 CMR 28.08(3) (corresponding regulations).

⁸BSEA *Hearing Rule* I(J).

⁹M.G.L. c. 71B, § 3.

temporary emergency care of Oliver, but beyond that neither care nor custody, DCF has no interest relating to the subject matter. Moreover, an order that DCF provide any kind of placement for Oliver would violate DCF regulations. As such, complete relief may be granted in its absence, and DCF is not a necessary party to the litigation.

Parents' position is that Oliver requires residential placement for educational reasons, and they sought DCF involvement only insofar as they believed it would help them to maintain Oliver's placement at the Walker CBAT until the BSEA hearing resolved in their favor. As such, they do not support joinder of DCF.

In the matter before me I may, upon considering all of the evidence in the case on the merits, find that Oliver requires nothing more than the services he currently receives. In the alternative, I may find that he requires a residential placement for educational or non-educational purposes, or that he requires other home services in order to access his education. It appears, therefore, that the first part of the analysis weighs in favor of joinder. But I cannot order DCF to provide any services, residential or home-based, if to do so would contravene DCF's own regulations.

Pursuant to its regulations, DCF may share the cost of a residential placement for a child under certain circumstances.¹⁰ It may not, however, provide a placement for a child who is not in its care or custody, voluntarily or otherwise.¹¹ For a child to receive voluntary DCF services, up to and including placement, DCF must first determine that he is an appropriate candidate for its services.¹² In this case, DCF initially denied Oliver's application for voluntary services. There is no indication in the record that DCF failed to follow its procedures in making or communicating that determination. Despite its willingness to step in short-term to prevent further psychiatric hospitalization, the department maintains that Oliver is not an appropriate candidate for its services. However, at this point in time, DCF has care of Oliver, pursuant to a voluntary agreement between Parents and DCF. As a result, DCF currently has an interest in these proceedings. I recognize that the agreement is due to expire at the end of the month, and at that point there will be no formal relationship between the child and the agency. Because of this reality, it is unlikely that I will assign DCF responsibility for future services and supports, up to and including residential placement.¹³

¹⁰ See 110 CMR 7.404(2) ("If a child's IEP specifies that a private day school program . . . is necessary to meet the child's special education needs and the Department determines that the child should be placed in community residential care for non-educational reasons, then the Department shall share the cost of the placement with the local educational agency.")

¹¹ Cf. M.G.L. c. 119, § 21 (defining as "custody" the power to, *inter alia*, "determine a child's place of abode, medical care and education" and defining "child requiring assistance"); 110 CMR 4.00 (providing for education services for children *in the Department's care or custody*" (emphasis added)); 110 CMR 4.10 (pertaining to voluntary services).

¹² See 110 CMR 4.04-4.06.

¹³ Cf. *In re Agawam Public Schools and Massachusetts Department of Children and Families* BSEA #14-03554 (Crane 2013) (allowing DCF Motion to Dismiss where child was not in DCF care or custody and application for voluntary services had been denied).

B. DMH

Falmouth's position is that its IEP proposing continued placement of Oliver at CCC is appropriate, and to the extent Oliver requires a residential setting, he does not require it for educational reasons. After a hearing, the BSEA may determine that additional services and supports, up to an including a residential placement, are needed for non-educational reasons and that they are the responsibility of a state agency. Although Falmouth initially argued that the pending appeal of DMH's service authorization denial weighed in favor of joinder, the District recognizes that DMH denied the appeal in the intervening weeks. Falmouth maintains, however, that Parents may change their mind and request a fair hearing within the twenty day appeal period, such that DMH's denial is not final. Moreover, DMH improperly denied Oliver's application by relying on its belief that he has an entitlement to residential placement from Falmouth. According to the District, in these circumstances where service authorization was denied on the basis of the "needs and means" test, DMH has a continuing responsibility to periodically contact Oliver regarding his need for services, similar to its obligation pursuant to 104 CMR 29.04(5) regarding individuals who have been determined to need DMH services but do not receive them because there is no capacity in such services. Finally, funding the cost of a residential placement for one of its clients is in accordance with DMH rules, regulations, and policies.

In its *Opposition to Falmouth's Motion to Join the Department of Mental Health*, DMH argues that Oliver is eligible for special education under the "serious emotional disturbance classification," and that this primary disability affects his progress in all curriculum areas. Due to the close nexus between his disability, emotional disturbance, and his educational needs, Oliver requires residential placement for educational reasons. Therefore, complete relief may be granted in the absence of DMH. Moreover, Oliver is not a currently a DMH client, has never been authorized to receive services from DMH, and has no prior history of receiving services from the department. According to DMH, Oliver applied for DMH services, DMH followed its service authorization process in denying his application, and despite an opportunity to further appeal the denial of DMH eligibility pursuant to the relevant regulations, Parents have indicated that they will not request a fair hearing. As such, the DMH service authorization determination is final, with no application or appeal pending. Because DMH has no involvement with Oliver or his family, DMH is not a necessary party to the litigation. Even if Parents did choose to file for a fair hearing within the twenty day appeal period, Oliver would remain ineligible for DMH services as of the hearing date, because under the relevant regulations DMH would have ten days to appoint a hearing officer and there is no required timeframe for the scheduling or completion of the fair hearing. Because the BSEA does not have jurisdiction to overturn DMH's denial of service authorization and cannot, as a result, order DMH to provide services to an individual it has determined is not eligible for services, DMH is not a necessary party and complete relief can be granted among the existing parties.

DMH also asserts that joining the department "so close in time to the scheduled May 13th BSEA hearing would cause unfair and undue prejudice to DMH since the hearing officer has taken the position that there is no authority to continue or postpone the May 13th hearing,"

particularly given that exhibits and witness lists are due May 8, 2019 and the joinder ruling would, necessarily, be issued close in time to the hearing.¹⁴

Parents' position is that Oliver requires residential placement for educational reasons. Although they applied to DMH for service authorization, the only service they sought was residential placement. They appealed DMH's denial to the Area Medical Director, who upheld the denial of service authorization. Parents do not plan to request a fair hearing. As such, they do not support joinder of DMH.

As I stated with regard to DCF, above, it is possible that I will determine that Oliver requires residential services for non-educational reasons. Given Oliver's mental health diagnosis as well as his psychiatric hospitalizations, I might find that DMH is the agency responsible for such services. For this reason it may not be possible to grant complete relief in the absence of DMH. I now consider whether joinder is consistent with DMH's regulations.

In this instance, as DMH and Parents both assert, DMH has determined that Oliver does not meet eligibility criteria. Although this determination may have been based on the assumption that Oliver has an entitlement to residential placement by way of Falmouth, and that assumption may or may not be accurate, DMH has denied service authorization for Oliver. The BSEA does not have jurisdiction to overturn DMH's final decision. As such, DMH is not a necessary party to this litigation. Should Parents elect to request a fair hearing during the pendency of these proceedings, Falmouth may renew its *Motion to Join DMH*.

CONCLUSION

In this matter, Parents assert that Oliver requires residential placement for educational reasons. The District argues that to the extent Oliver may need additional supports, up to and including residential placement, these supports are for non-educational reasons and as such, they may be the responsibility of a state agency. Pursuant to M.G.L. c. 71B, § 2A and 603 CMR 28.08(3), the BSEA has jurisdiction "to resolve differences of opinion among school districts, private schools, parents, and state agencies." Although at this early stage in the case I cannot say that I will be able to grant complete relief between the two parties, I conclude that I have no authority to order joinder of DMH. I do have the authority to join DCF, and do so here, with the understanding that I am limited, due to the department's own regulations, as to what supports and services (and for how long) I may order DCF to provide for Oliver. For these reasons, I find that DCF is a necessary party to this matter, and that DMH is not.

ORDER

- 1) Falmouth's *Motion to Join the Department of Children and Families* is hereby

¹⁴I dispose of these arguments briefly here, as they merit no further discussion. BSEA *Hearing Rule* II(D)(4)(a) states explicitly, "For matters assigned accelerated status, no postponements will be granted." Falmouth filed its joinder motions on April 29, 2019, two weeks before the hearing date. DMH participated in a Conference Call on May 1, 2019, at which time DMH counsel indicated that the department was unable to shorten time for its response, and requested a hearing on Falmouth's joinder motion. DMH submitted its *Opposition* at the end of the day on May 6, 2019, one week before the hearing was scheduled to begin. The *Motion Session* took place May 7, 2019. To argue that DMH will be prejudiced by receipt of the ruling so close in time to the hearing date is disingenuous.

ALLOWED.

- 2) Falmouth's *Motion to Join the Department of Mental Health* is hereby DENIED.
- 3) The parties must exchange exhibits and witness lists by close of business on May 8, 2019.
- 4) Exhibits and witness lists are due to the BSEA by 12:00 PM on May 9, 2019.
- 5) The Hearing will take place on May 13 and 14, 2019 at the BSEA, 14 Summer St., 4th fl., Malden. It will begin at 10:00 AM each day.

By the Hearing Officer:

Amy M. Reichbach

Dated: May 8, 2019